TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~457.~~ ~~2 12~~ 26

THOMAS SHERLOCK, ZACHARIAH M. SHIRLEY, C. G. PEARCE, MOSES ANDREW, FRANK CARTER, D. C. BENEDICT, WILLIAM C. HITE, THOMAS GAFF, PATRICK ROGERS, COMPOSING THE UNITED STATES MAIL-LINE COMPANY, PLAINTIFFS IN ERROR,

vs.

CHARLES ALLING, ADMINISTRATOR OF OTIS B. SAPPINGTON, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED JULY 29th, 1874.

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1 STATE OF INDIANA:

In the supreme court.

Be it remembered that heretofore, to wit, on the 26th day of March, A. D. 1872, the same being the 104th day of the November term, 1871, came the appellants by their attorneys, and filed in the clerk's office of the supreme court of the State of Indiana the following transcript of the record of the proceedings of the Switzerland common pleas court, with assignment of errors endorsed thereon, in words and figures following, to wit:

2 STATE OF INDIANA,
Switzerland County, ss:

Pleas and proceedings had in the Switzerland court of common pleas, at its March term, 1871, which was begun and held at the court-house in Veavay, on Monday the 13th day of March, 1871, and before the Hon. Scott Carter, judge of said court.

TRANSCRIPT FROM JEFFERSON COUNTY.

CHARLES ALLING, ADM'R OF OTIS B. SAPPINGTON, dec'd,
vs.
THOMAS SHERLOCK, ZACHARIAH M. SHIRLEY, Christy G. Pearce, Moses Andres, Frank Carter, D. C. Benedict, Wm. C. Hite, Thomas Gaff, Patrick Rogers, & William T. Pate. } Damages.

Be it remembered, that heretofore, to wit, on the 7th day of Feb-
3 ruary, 1871, a transcript in the above-entitled cause was filed in the clerk's office of the Switzerland court of common pleas, which reads as follows, to wit:

STATE OF INDIANA,
Jefferson County, ss:

Pleas at the court-house in the city of Madison, county of Jefferson, and State of Indiana, on the 4th day of January, A. D. 1871, it being the 15th judicial day of said term of said court, and before the Hon. Scott Carter, sole judge of said court.

TRANSCRIPT FROM DEARBORN COUNTY.

CHARLES ALLING, ADMINISTRATOR OF OTIS B. SAPPINGTON, dece'd,
vs.
THOMAS SHERLOCK, ZACHARIAH, M. SHIRLEY, Christy G. Pearce, Moses Andres, Frank Carter, D. C. Benedict, Wm. C. Hyte, Thomas Gaff, Patrick Rogers, William T. Pate.

Be it remembered, that heretofore in the vacation of said court,
4 the following marked "D" from the court of common pleas of Dearborn County, Indiana, was filed in my office, to wit, on the February, 1870, which reads in the words and figures following, to wit:

STATE OF INDIANA,
County of Dearborn, ss :

Be it remembered, that on the 18th day of December, A. D. 1870, in the vacation of the court of common pleas of said county of Dearborn, Charles Alling, administrator of the estate of Otis B. Sappington, deceased, by Harrington and Korbly, esq's, his attorneys, filed in the office of the clerk of said county court, his complaint against Thomas Sherlock, Zachariah M. Shirley, Christy G. Pearce, Moses Andres, Frank Carter, D. C. Benedict, Wm. C. Hite, Thomas Gaff, Patrick Rogers, and William Pate, which complaint is in the words and figures to wit, (here insert,) and that said complaint hath the following præcipe endorsed thereon, to wit: "Clerk issue summons to sheriff of Dearborn, Switzerland, and Jefferson Counties."

And thereupon on said day summons were duly issued, bearing
5 the seal of said court and attested by the clerk thereof, and directed respectively to the sheriffs of said counties aforesaid, and that afterwards, to wit, on the 3rd Monday of January, A. D. 1870, the said sheriff of Dearborn County, returned said summons issued to him, with the following endorsement thereon, to wit: "Served Dec. 23rd, 1869, by reading to Thomas Gaff, none of the other parties named within having been found in my bailiwick.

"FRANK R. DORMAN,
"*Sheriff D. C.*

"Service, 50; mileage, 1.00; ret., 10.—1.60.

And that on the day of January, A. D. 1870, the said sheriff of Switzerland County returned said summons issued to him with the following endorsement thereon, to wit:

"Served by reading to and in hearing of William T. Tate, January 5th, 1870.

"MATTHEW WORSTELL, *S. S. C.*,
"By S. P. WORSTELL, *Dept.*

"Mileage, 4.00; service & ret., 60; postage, 3—4.63."

And afterwards, to wit, on the 18th day of January, 1870, the same being the second judicial day of the January term of said
6 court of common pleas, the following proceedings were had in said cause in said court, viz:

CHARLES ALLING, ADM'R OF THE ESTATE OF Otis B. Sappington, decd., *vs.* THOMAS SHERLOCK AND OTHERS. } Civil action for damages.

Now at this time comes the *the* said plaintiff, by Charles Korbly, esq., his attorney, and moves the court for a change of the venue of this cause, and in support of said motion files the affidavit of Charles Alling.

And the court being fully advised in the premises, sustaines said motion, and now orders that the venue of this cause be changed to the county of Jefferson, in the State of Indiana, to be tried and determined in the common pleas of Jefferson County aforesaid, and the clerk of this court is directed to transmit the papers on file in this cause, together with a certified copy of all the proceedings had in this court, as the same appears of record, to the clerk of the said court of common pleas of Jefferson County, Indiana, upon the payment of all the costs taxed in this cause.

7 I, John A. Connell, clerk of the court of common pleas within and for said county of Dearborn and State of Indiana, do certify the above and foregoing to be a full, true, and complete transcript of all proceedings had in said cause in said court as the same remain of record in the office of the clerk of said court.

Witness my name and the seal of said court hereto affixed at Lawrenceburgh, on the 24th day of January, A. D. 1870.

[L. S.] JNO. A. CONNELL, *Clerk.*

With which transcript a complaint was also filed herein, marked "A," which reads in the words and figures following, to wit:

Complaint.

In the Dearborn common pleas court, January term, 1870.

CHARLES ALLING, ADMINISTRATOR OF OTIS B. Sappington, deceased,
vs.
8 THOMAS SHERLOCK, ZACHARIAH M. Shirley, Christy G. Pearce, Moses Andres, Frank Carter, D. C. Benedict, Wm. C. Hite, Thomas Gaff, Patrick Rogers, William T. Pate. } Complaint.

The plaintiff, as administrator of the estate of Otis B. Sappington, deceased, complaines of the said defendants, and says that said defendants were at the time of the committing of the wrongs and injuries hereinafter stated, the owners of a line of steamboats navigating the Ohio River between the port and city of Cincinnati, in the State of Ohio, and the port and city of Louisville, in the State of Kentucky; and were then owning, running, and navigating said line of steamboats between said ports for the avowed purpose of carrying passengers, freight, and the United States mail, under the firm or corporate name of the Cincinnati and Louisville United States Mail Line Company. That at
9 said time said defendants as aforesaid were running and navigating in said line the steamboats called respectively the United States and the America. That said Otis B. Sappington, then in full life, to wit, on the 4th day of December, 1868, at the port and city of Cincinnati aforesaid, took passage on the defendants' steamboat United States aforesaid from thence to the city of Madison, in the county of Jefferson and State of Indiana, and then and there paid to the defendants his passage-money, to wit, $3.50, which was received by the servants of the defendant', and in consideration of which the defendants undertook to safely carry said Sappington to the said city of Madison.

The plaintiff further alleges that the said defendants' servants and officers in charge of said steamboat United States, to wit, the captain and master thereof, and the pilots thereof, so carelessly and negligently navigated and steered said steamboat, that the said steamboat collided with and against the defendants' steamboat America, which the defendants were then navigating on said Ohio River, from Louisville to
10 Cincinnati, on the night of said 4th day of December, 1868, at the county of Switzerland and within the territorial jurisdiction of the State of Indiana, above the line of low-water mark, and by such collision the hull of said steamboat United States was broken into, and the steamboat ignited by the fires and lights upon said two boats, and the said

steamboat United States was then and there and thereby burned to the water's edge and distroyed, and the said Otis B. Sappington was then and there and thereby, without any fault or negligence of his own whatever, suffocated and burned to death.

The plaintiff says that the said pilot in charge of the said steamboat United States, whose duty it was, at the time aforesaid, to steer and navigate said steamboat, was then and there guilty of gross carelessness and negligence in this, to wit, that he did then and there navigate said steamboat United States at a rate of speed exceeding 18 miles an hour, down stream at the time, at the time he saw the steamboat America approaching at a similar rate of speed in the night-time, when it
11 was dark, cloudy, raining, and snowing, and did not slacken the speed of the steamboat United States nor give any signal of alarm or danger until it was too late to avoid the said collision, although it was his duty at the time to do both, and although he, at the time, had notice of the approach of and saw the fires and signals-lights of the said steamboat America when the latter and the said United States were two miles apart from each other; that he then and there was grossly negligent in giving a signal with the steam-whistle of the United States for the choice of sides of the river for passing the said America, when, by the well known custom of the pilots and navigators of the Ohio River, from time immemorial, and by the rules prescribed according to an act of Congress of the United States, it was the duty and the privilege of the pilot of the said America first to take the choice of sides to pass the said United States.

The plaintiff says that in consequence of the negligence of the pilot of the said United States first giving said signal and from other causes, there was a misunderstanding in the signals between said pilots
12 of said two boats in regard to passing each other, and the said pilot of the United States, instead of signaling distress or alarm, or slacking the speed of the said United States, negligently and recklessly persisted in navigating the United States at said high rate of speed until said two steamboats were within less than 200 (two hundred) yards of each other, and until it was too late to check the speed or turn aside to avoid said collision, although it was his duty to stop the engines of said boat and arrest its speed by backing the engines of the same before the said boats approached each other nearer than 800 yards, according to the general custom governing pilots and navigators on such river from time immemorial, and according to the rules governing pilots, prescribed according to an act of Congress of the United States.

Whereby said collision occurred, and the said Otis B. Sappington came to his death as aforesaid.

Wherefore the estate of said Sappington was damaged in the
13 sum of $5,000, for which the plaintiff demands judgment.

HARRINGTON & KORBLY,
Attys.

And a summons was also filed with said transcript, marked "B," which reads in the words and figures following, to wit:

Summons.

THE STATE OF INDIANA,
Dearborn County, set:

The State of Indiana to the sheriff of Dearborn County, greeting:

You are hereby commanded to summons Thomas Sherlock, Zachariah

M. Shirley, Christey G. Pearce, Moses Audres, Frank Carter, D. C. Benedict, William C. Hyte, Thomas Gaff, Patrick Rogers, and William T. Pate to be and appear in the court of common pleas, before the judge thereof, on the first day of the next term of said court, to be holden at Lawrenceburgh, in and for said county, on the 3rd Monday in January, 1870, to answer the complaint of Charles Alling, administrator of Otis B. Sappington, deceased, in a civil action. Amount*ed* demanded,
14 $5,000. And of this writ make due return.

Witness John A. Conwell, clerk of the said court, and the seal thereof hereto affixed, at Lawrenceburgh, this 20th day of December, A. D. 1869.

[L. S.] JOHN A. CONWELL, *Clerk.*

And an affidavit for change of venue was also filed with said transcript, marked "C," which reads in the words and figures following, to wit:

Affidavit for change of venue.

Dearborn common pleas court, January term, 1870.

CHARLES ALLING, ADMINISTRATOR OF OTIS B. Sappington, deceased,
vs.
THOMAS SHERLOCK, ZACHARIAH M. SHERLEY, Christey G. Pearce, Moses Andres, Frank Carter, and others.

STATE OF INDIANA,
County of Jefferson, ss:

15 Charles Alling, administrator of Otis B. Sappington, deceased, plaintiff in the above-entitled action, being duly sworn, deposes and says that the opposite party, the said defendants, have an undue influence over the citizens of Dearborn County, where said action is pending, as deponent verily believes.

CHARLES ALLING.

Subscribed and sworn to at said county this 14th day of January, A. D. 1870, before me, a notary public in and for said county.

Witness my hand and notariel seal.

[L. S.] JEROME F. MULLEN, *N. P. J. C.*

And a summons was also filed with said transcript, marked "E," which reads in the figures and words following, to wit:

Summons.

THE STATE OF INDIANA,
Dearborn County, set:

The State of Indiana to the sheriff of Switzerland County, greeting:

You are hereby commanded to summons Thomas Sherlock, Zachariah M. Shirley, Christey G. Pearce, Moses Andres, Frank Carter, D.
16 C. Benedict, Wm. C. Hite, Thomas Gaff, Patrick Rogers, and William T. Pate, to be and appear in the court of common pleas, before the judge thereof, on the first day of the next term of said court, to be held at Lawrenceburgh, in and for said county, on the 3rd Monday

of January, 1870, to answer the complaint of Charles Alling, administrator of Otis B. Sappington, deceased, in a civil action. Amount demanded, five thousand dollars. And of this writ make due return.

Witness John A. Conwell, clerk of said court, and the seal thereof hereto affixed, at Lawrenceburgh, this 3rd day of January, 1870.

[L. S.] JOHN A. CONWELL, *Clerk.*

And afterwards, at the June term of said court, to wit, on the 20th day of June, 1870, come the parties, and, on plaintiff's motion, the depositions her'in taken on his behalf are now here published.

And afterwards, at a further day of said term of said court,
17 to wit, on the 22nd day of June, 1870, come the parties, and the said plaintiff files his amended complaint her'in, which reads as follows, to wit:

Amended complaint.—1st paragraph.

In the Dearborn common pleas court, January term, 1870.

CHARLES ALLING, ADMINISTRATOR OF OTIS B. SAPPINGTON, deceased,
vs.
THOMAS SHERLOCK, ZACHARIAH M. SHIRLEY, CRISTEY G. PEARCE, MOSES ANDRES, FRANK CARTER, D. C. BENEDICT, WM. C. HITE, THOMAS GAFF, WILLIAM T. PAPE.

The plaintiff, as administrator of the estate of Otis B. Sappington, deceased, complaines of the said defendants, and says that said defendants were at the time of the committing of the wrongs and injuries hereinafter stated, the owners of a line of steamboats navigating the Ohio River, between the port and city of Cincinnati, in the
18 State of Ohio, and the port and city of Louisville, in the State of Kentucky, and were then owning, running, and navigating said line of steamboats between said ports for the avowed purpose of carrying passengers, freight, and the United States mail, under the firm or corporate name of the Cincinnati and Louisville United States Mail-Line Company; that at said time said defendants as aforesaid were running and navigating in said line the steamboats called respectively the United States and the America. That said Otis B. Sappington, then in full life, to wit, on the 4th day of December, 1868, at the port and city of Cincinnati aforesaid, took passage on the defendants' steamboat United States aforesaid, from thence to the city of Madison, in the county of Jefferson and State of Indiana, and then and there paid to the defendants his passage-money, to wit, $3.50, which was received by the servants of the defendants, and in consideration of which the defendants undertook to safely carry said Sappington to the said city of Madison. The plaintiff further alleges that the said defendants'
19 servants and officers in charge of said steamboat United States, to wit, the captain and master thereof, and the pilots and other officers & employees thereof, so carelessly and negligently navigated and steered and managed said steamboat that the said steamboat collided with and against the defendants' steamboat America, which the defendants were then navigating on the Ohio River from Louisville to Cincinnati, on the night of said 4th day of December, 1868, at the county

of Switzerland, and within the territorial jurisdictions of the State of Indiana, above the line of low-water mark, and by such collision the hull of said steamboat United States was broken into and the steamboat ignited by the fires and lights upon said two boats, and the said steamboat United States was then and there and thereby burned to the water's edge and destroyed, and the said Otis B. Sappington, who was at said time a resident of Jefferson County, Indiana, and domiciled therein, was then and there and thereby, without any fault or negligence of his own whatever, suffocated and burned to death. The plaintiff says that the said pilot in charge of the said steamboat United
20 States, whose duty it was at the time aforesaid to steer and navigate said steamboat, was then and there guilty of gross carelessness and negligence in this, to wit, that he did then and there navigate said steamboat United States at a rate of speed exceeding 18 miles an hour down stream, at the time he saw the steamboat America approaching at a similar rate of speed in the night-time, when it was dark, cloudy, raining, and snowing, and did not slacken the speed of the steamboat United States, nor give any signal of alarm or danger until it was too late to avoid the said collision, although it was his duty at the time to do both, and although he at the time had notice of the approach of, and saw the fires and signal-lights of the said steamboat America, when the latter and the said United States were two miles apart from each other. That he then and there was grossly negligent in first giving a signal with the steam-whistle of the United States for the choice of sides of the river for passing the said America, when, by the well-known custom of the pilots and naviga-
21 tors of the Ohio River from time immemorial, and by the rules prescribed according to an act of Congress of the United States, it was the duty and the privilege of the pilot of the said America first to take the choice of sides to pass the said United States. The plaintiff*s* says that in consequence of the negligence of the said pilot of the said United States, first giving said signal, and from other causes, there was a misunderstanding in the signals between said pilots of said two boats, in regard to passing each other, and the said pilot of the United States, instead of signaling distress, or alarm or slackening the speed of the said United States, negligently and recklessly persisted in navigating the United States at said high rate of speed until said two steamboats were within less than 200 *hundred* yards of each other, and until it was too late to check the speed or turn aside to avoid said collision, although it was his duty to stop the engines of said boat, and arrest its speed by backing the engines of the same, and to give a signal of alarm indicated by short, quick, successive whistles before the
22 said boats approached each other nearer than 800 yards; according to the general custom governing and navigators on said river from time immemorial, and according to the rules governing pilots prescribed according to an act of Congress of the United States. The plaintiff says that said Otis B. Sappington left surviving him a widow, Sarah Sappington, and three minor children, viz: Chas. Sappington, Mary C. Sappington, & Otis B. Sappington, who are all in full life.

Whereby said collision occu'red and the said Otis B. Sappington came to his death as aforesaid.

Wherefore the estate of said Sappington was damaged in the sum of $5,000, for which the *f'l'ff* demands judgment.

HARRINGTON & KORBLY, *Attys.*

2nd par.—Amended complaint.

SECOND PARAGRAPH.

The plaintiff, as administrator of the estate of Otis B. Sappington, deceased, further complains of the defendants, and says that said
23 defendants were, at the time of the *the* committing of the wrong and injury hereinafter stated, the owners of a line of steamboats navigating the Ohio River between the port and city of Cincinnati, in the State of Ohio, and the port and city of Louisville, in the State of Kentucky, and intermediate ports, and were then owning, running, and navigating said line of steamboats between said ports for the avowed purpose of carrying passengers, freight, and the United States mails, under the firm or corporate name of the Cincinnati and Louisville United States Mail-Line Company. That at said time said defendants as aforesaid were running and navigating in said line the steamboats called respectively the United States and the America. That said Otis B. Sappington, then in full life, being a citizen of Jefferson County, and State of Indiana, and domiciled thereat, to wit, on the 4th day of December, 1868, at the port and city of Cincinnati aforesaid, took passage on the defendants' steamboat United States aforesaid, from thence to the city of Madison, in the county of Jefferson and State of Indiana, and
24 then and there paid to the defendants his passage-money, to wit, $3.50, which was received by the servants of the defendants, and in consideration of which the defendants agreed to safely carry said Sappington to said city of Madison. The plaintiff further alleges that the said defendants' servants and officers in charge of said steamboat United States, to wit, the captain and master thereof, and the pilots thereof, so carelessly and negligently navigated and steered said steamboat, that the said steamboat collided with and against the defendants' steamboat America, which the defendants were then navigating on said Ohio River from Louisville to Cincinnati, on the night of said 4th of December, 1868, at the county of Switzerland and State of Indiana, and by such collision the hull of said steamboat United States was broken into and ignited by the fires and lights upon the said two boats, and the said steamboat United States was then and there and thereby burned to the water's edge, and distroyed on a point on the said river in said
25 county, above low-water mark on said river, and the said Otis B. Sappington was then and there and thereby, without any fault or negligence of his own whatever, suffocated and burned to death at said county, above low-water mark on said river.

The plaintiff says that the said pilot in charge of the said steamboat United States, whose duty it was at the time aforesaid to steer and navigate said steamboat, was then and there guilty of gross carelessness and negligence in this, to wit, that he did then and there navigate said steamboat United States at a rate of speed exceeding 16 miles an hour down stream, at the time he saw the steamboat America approaching at a similar rate of speed, to wit, 14 miles an hour, in the night-time, when it was dark, cloudy, raining, and showing, and did not slacken the speed of the steamboat United States, nor give any signal of alarm or danger until it was too late to avoid the said collision, although it was his duty at the time to do both, and although he at the time had
26 notice of the approach of, and saw the fires and signal-lights of the said steamboat America, when the latter and the said United States were two miles apart from each other. That he then and there was grossly negligent in first giving a signal with the steam-whistle of

the United States for the choice of sides of the river for passing the said America, before hearing the signal-whistle of the ascending boat America, when, by the rules prescribed by the supervising inspector, according to an act of Congress of the United States entitled "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam, and for other purposes," approved Aug. 30th, 1852, (a copy of which rules are filed herewith as part hereof, marked "A,") it was the duty of the pilot of the United States to await the signal of the ascending steamboat America, before signaling the America. The plaintiff says that, in consequence of the negligence of the said pilot of the said United States
27 first giving said signal and from other causes, there was a misunderstanding in the signals between said pilots of said two boats in regard to passing each other, and the said pilot of the United States, instead of signaling distress or alarm, or slackening the speed of the said United States, negligently and recklessly persisted in navigating the United States at said high rate of speed, said two boats were within less than 400 yards of each other, and until it was too late to check the speed or turn aside to avoid said collision, although it was his duty to stop the engine of said boat and arrest its speed by backing the engines of the same, and to give a signal of alarm, indicated by short, quick, successive whistles, before the said boats approached each other nearer than eight hundred yards, according to the said rules governing pilots prescribed according to the act of Congress of the United States aforesaid. That the said pilot of the United States was grossly negligent in not paying proper attention to the signals of the approaching steamer America, whereby he misapprehended the signals of the pilot of
28 the America for the choice of sides for passing of said steamboats.

That the pilot of the United States was then and there grossly negligent in navigating his boat at a high rate of speed, to wit, 16 to 18 miles an hour down stream, on said night, when it was dark and cloudy, called by navigators of the Ohio river a "grey" night, on which it is difficult to distinguish how far distant *a* an approaching steamboat is, and when approaching objects appear to be further away than they really are, and on which the human eye is liable to be deceived, and in consequence of said night being a gray night and a high wind blowing up stream, and in consequence of navigating said steamboat United States at said high rate of speed, the pilot of the United States approached to' near the steamer America (to wit, nearer than 800 yards) to exchange signals with the pilot of the said America for the passage of said two steamboats, and in consequence thereof said collision took place and
29 Sappington came to his death. And the defendants on said night negligently carried a large quantity of explosive and highly combust*a*ble oil, to wit, coal-oil or petrol'um-oil, on said United States, which was ignited by said collision, and burned said steamboat in an exceedingly short space of time, and caused the death of said Sappington, as aforesaid.

The plaintiff further alleges that the defendants' servants, the pilots, captains, mates, and other officers and persons in command and in charge of the said defendants' steamboat America, on said night of said collision, were also grossly negligent, and by their gross negligence in the navigating and steering of the said America she collided with the said steamboat United States, and caused the latter to be burned, and the said Sappington to come to his death as aforesaid; and they were negligent, among other things, in this, that the captain of the America was

standing on the hurrican' deck, aft of the chimneys, on the America at the time she was approaching the said United States, and when the said America signaled the said United States for choice of sides, by
30 sounding twice with the steam-whistle, to keep to the left, he heard but one sound of the steam-whistle of the United States in reply, which meant to keep to the right instead of to the left, and negligently and carelessly permitted the America to be navigating at the high rate of speed of from 12 to 14 miles an hour, and did not communieate with the pilot of the America in relation to the cross of signals; and there was no lookout on the America forward of the chimneys. And the said America, in consequence of the pilot of the United States signaling for the same side of the river which the pilot of the America had signaled for, the two boats, approaching at a rate of speed not exceeding 28 miles an hour, collided as aforesaid.

That the pilot of the said America was grossly negligent in this, that he signaled the United States to keep to the left by blowing two whistles of the America, and thereupon continued to approach the United States at the high rate of speed of 14 miles an hour until he got within 400 yards of the United States, at which distance it was too late and impossible to avoid a collision by c'anging course
31 or stopping, or backing the engines, although he heard no signal until the two boats were within 400 yards of each other, and this in violation of rule second of the said rules in Exhibit A, filed herewith, which requires the boats to be stopped and backed if the signals are not given and properly understood by the time the boats are 800 yards apart.

That the said pilot of the America was grossly negligent and unskillful in the navigation of the said steamboat America in this, that he continued to navigate the said steamboat at a rate of speed exceeding 12 miles an hour at the time of approaching the said United States on the night of said collision, in the center of the channel of the river, straight up stream, until the America came within 500 yards of the said United States, at which time he steered the America, quartering across the river, towards the Indiana shore and toward the approaching steamboat United States, at the same time signaling the said United States to keep to the left, when it was too late to change the course of either boat, or to stop and back either boat, to avoid a collision,
32 and by said unskillful and careless conduct of said pilot the said collision occur'ed as aforesaid.

That the pilot of the America was grossly negligent in not signaling the pilot of the "States;" that the first signal of the America had not been answered, and in not slackening the speed, or entirely stopping the America, until he could get an answer to his signal for choice of sides.

The plaintiff further alleges the said Otis B. Sappington left surviving him Sappington, his widow, and three infant children, viz, Charles C. Sappington, Mary W. Sappington, and Otis B. Sappin'ton, who are all now in full life.

Wherefore the plaintiff demands judgment for $5,000 damages for the benefit of said widow and infant children, and all other relief.

Third paragraph.

The plaintiff further complains of the defendants, and says that the said defendants were at the time of the committing of the wrongs and injuries hereinafter stated, the owners of a line of steamboats

33 navigating the Ohio River, between the port and city of Cincinnati, in the State of Ohio, and the port and city of Louisville, in the State of Kentucky, and were then owning, running, and navigating said line of steamboats between said ports for the avowed purpose of carrying passengers and freight and the United States mail, under the firm or corporate name of the Cincinnati and Louisville United States Mail-Line Company. That at said time said defendants as aforesaid were owning, running, and navigating in said line the steamboats called respectively the United States and the America; that said Otis B. Sappington, then in full life, and being a citizen of Jefferson County and State of Indiana, and domiciled there, to wit, on the 4th day of December, 1868, at the port and city of Cincinnati aforesaid, took passage on the defendants steamboat United States aforesaid, from thence to the city of Madison, in the county of Jefferson and State of Indiana, and then and there paid to the defendants his passage-money, to wit, $3.50, which was received by the servants of the defendants, and
34 in consideration of which the defendants undertook to safely carry said Sappington to the said city of Madison.

The plaintiff further alleges that the said defendants' servants and officers in charge of said steamboat United States, to wit, the captain and mates thereof, and the pilots and engineers and employees thereof, so carelessly and negligently navigated and steered said steamboat that the said steamboat collided with and against the defendants' steamboat America, which the defendants were then navigating on said Ohio River from Louisville to Cincinnati, on the night of the said 4th day of December, 1868, at the county of Switzerland and State of Indiana, and by such collision the boat of said steamboat United States was broken into and ignited by the fires and lights upon said two boats, and the said steamboat United States was then and there and thereby burned to the water edge, and destroyed at a point on the said river in said county above low-water mark on said river, and the said Otis B. Sappington was then and there and thereby, without any fault or
35 negligence of his own whatever, suffocated and burned to death at said county above low-water mark on said river.

The plaintiff further alleges the said Otis B. Sappington left surviving him Sappington, his widow, and three infant children, viz, Charles C. Sappington, Mary W. Sappington, and Otis B. Sappington, who are now in full life.

Wherefore the plaintiff demands judgment for $5,000 damages for the benefit of said widow and infant children, and all other relief.

Fourth paragraph.

4th paragraph.

The plaintiff further complains of the said defendants, and says that the said defendants were, at the time of the committing of the wrongs and injuries hereinafter stated, the owners of a line of steamboats navigating the Ohio River between the port and city of Cincinnati, in the State of Ohio, and the port and city of Louisville, in the State of Kentucky, and intermediate points in Indiana, and were then and there owning, running, and navigating said line of *of* steamboats be-
36 tween said ports for the avowed purpose of carrying passengers, freight, and the United States mail, under the firm or corporate name of The Cincinnati and Louisville United States Mail-Line Company.

That at said time said defendants, as aforesaid, were running and navigating in said line the steamboats called respectively the United States and the America; that said Otis B. Sappington, then in full life, and being a citizen of the county of Jefferson and State of Indiana, and domiciled there, to wit, on the 4th day of December, 1868, at the port and city of Cincinnati aforesaid, took passage on the defendants' steamboat United States aforesaid, from thence to the city of Madison, in the county of Jefferson and State of Indiana, and then and there paid to the defendants his passage-money, to wit, $3.50, which was received by the servants of the defendants, and in consideration of which the defendants undertook to safely carry said Sappington to the city of Madison.

The plaintiff further alleges that the said defendants' servants
37 and officers in charge of said steamboat' America and United States, to wit, the captains and masters thereof, and the pilots and engineers and employees thereof, so carelessly and negligently navigated, managed, and steered said steamboats that the said steamboats collided with and against each other, viz, the defendants' steamboats United States and America, which the defendants were then navigating on said Ohio River from Cincinnati to Louisville, and upon which first boat the said Sappington had taken passage as aforesaid on the night of said 4th of December, 1868, at the county of Switzerland and State of Indiana, and by such collision the hull of said steamboat United States was broken into and ignited by the fires and lights and coal-oil carelessly stored thereon upon said two boats, and the said steamboat United States was then and there and thereby burned to the water's edge and destroyed on a point on the said river, in said county, above low-water mark on said river. And the said Otis B. Sappington was then and there and thereby, without any fault or negligence
38 of his own whatever, suffocated and burned to death at said county above low water on said river.

The plaintiff further alleges that said Otis B. Sappington left surviving him Sappington, his widow, and three infant children, viz, Charles C. Sappington, Mary W. Sappington, and Otis B. Sappington, who are all now in full life.

Wherefore the plaintiff demands judgment for $5,000 damages for the benefit of said widow and infant children and all other relief.

HARRINGTON & KORBLY,
Plff.'s Attys.

Pilot rules.

The rules referred to in the foregoing complaint read as follows, to wit:

RULES AND REGULATIONS FOR THE GOVERNMENT OF PILOTS.

Revised and adopted by the board of supervising inspectors, October 17, 1865, in compliance with the provisions of the 29th section of act of Congress, entitled "An act to amend an act to provide for the better security of the lives of passengers on board of vessels
39 propelled in whole or in part by steam, and for other purposes," approved August 30th, 1852.

RULE 1.—When steamers are approaching each other, the signals for passing shall be one sound of the steam-whistle to keep to the right, and two sounds of the steam-whistle to keep to the left. These

signals first to be made by the ascending steamer. If the dangers of navigation, darkness of the night, narrowness of the channel, or any other cause, render it necessary for the descending boat to take the other side, she can do so by making the necessary signals, and the ascending steamer must gov herself accordingly.

These signals to be observed by all steamers either night or day.

RULE 2.—Should steamers be likely to pass near each other, and these signals shou'd not be made and answered by the time such boats shall have arrived at the distance of eight hundred yards from each other, the engines of both boats shall be stopped; or should the signal be given and not properly understood from any cause whatever, both boats shall be backed until their headway shall be fully checked,
40 and the engines shall not be again started ahead until the proper signals are made, answered, and understood.

RULE 3.—When two boats are about to enter a narrow channel at the same time, the ascending boat shall be stopped below such channel until the descending boat shall have passed through it; but should two boats unavoidably meet in such channel, then it shall be the duty of the pilot of the ascending boat to make the proper signals, and when answered by the descending boat, to tie as close as possible to the side of the channel the exchange of signals may have determined, as allowed by rule first, and either stop the engines or move them so as only to give the boat steerage-way, and the pilot of the descending boat shall cause his boat to be worked slowly until he has passed the ascending boat.

RULE 4.—When a steamer is ascending and running close on a bar or shore, the pilot shall in no case attempt to cross the river when a descending boat shall be so near that it would be possible
41 for a collision to ensue therefrom.

RULE 5.—No pilot of a descending steamer shall run down any island chute which is not the usual channel of the river, except such chutes as are designated by these rules, or may hereafter be designated by the board of supervising inspectors.

RULE 6.—When any steamer, whether ascending or descending, is nearing a short bend or point where, from any cause, a steamer approaching from an opposite direction cannot be seen at a distance of six hundred yards, the pilot of such steamer, when he shall have arrived within six hundred yards of that bend or point, shall give a signal by one long sound of his steam-whistle, as a notice to any steamer that may be approaching; and should there be any approaching steamer within hearing of such signal, it shall be the duty of the pilot thereof to answer such signal by one long sound of his steam-whistle, when both boats shall be navigated with the proper precautions, as prescribed by preceeding rules.

42 RULE 7.—When a steamboat is running in a fog or thick weather, it shall be the duty of the pilot to sound his steam-whistle at intervals not exceeding two minutes.

RULE 8.—When steamers are running in the same direction, and the pilot of the boat which is astern shall desire to pass either side of the boat ahead, he shall give the signal as in rule 1, and the pilot of the boat ahead shall answer by the same signal, and allow the other to pass on the side selected, and shall in no case attempt to cross her bow or crowd upon her course.

RULE 9.—When the boats are running from their dock or bearth, and other boats are liable to pass from any direction towards them, they shall give the same signal as in case of boats meeting at a bend, but

immediately after clearing the berth so as to be fully in sight, they shall be governed by rule 2.

RULE 10.—Doubts or fears of misunderstanding signals may be expressed by several short sounds of the whistle in quick succession.

43 RULE 11.—Steamers descending the Ohio and Mississippi Rivers, between Louisville, Ky., and New Orleans, La., shall not run down any island chute either by day or night, except those herein or hereinafter designated, unless such chutes are the usual channel of the river.

RULE 12.—The following island chutes may be navigated by descending steamers on the Ohio River, between Louisville, Ky., and Cairo, Ill., when the river shall be sufficiently high for them to do so with safety, viz.: Blue River Island, Dramond Island, Golconda Island, Sister Island, Stewart's Island, and Cumberland Island, either by day or night, and Wabash Island chute by daylight only.

RULE 13. The following island chutes on the Mississippi River between Cairo and New Orleans may be navigated by descending steamers during daylight, when the river shall be sufficiently high for them to do so with safety, viz: Islands Nos. 8, 34, 35, 40, 41, called Paddy's Hen; 46 or President's Island; 65; 75, or Ozark Island; 76, 93, 97; 109, or Pal-

44 myra Island; 110, or Big Black Island; 116, or Glasscock's Island; or 123, or Profit's Island.

RULE 14.—The following chutes may be navigated by descending steamers during the night when the river may be sufficiently high for them to do so with safety, viz: Island No. 8, 34, 41, or Paddy's Hen; 65, 76, 93, 97; 109, or Palmyra Island; 110, or Big Black Island; 116, or Glasscock Island.

RULE 15.—Ascending steamers are not prohibited from running any island chutes.

RULE 16.—Signal-lights for steamers under way are provided by law as follows, the same to be carried between sunset and sunrise.

For ocean steamers and steamers carrying sail a bright white at the foremast head, to throw the light through ten points of the compass on each side of the ship, viz: from right ahead to two points abaft the beam, and to be visible at least five miles. On the starboard side a green light, and on the port side a red light; each to throw the

45 light through ten points of the compass on their respective sides, viz: from right ahead to two points abaft the beam, and to be visible at least two miles.

These colored lights are to be fitted with imboard screens, projecting at least three feet forward from the lights, to prevent them from being seen across the bow.

For steamers navigating waters flowing into the Gulf of Mexico a red light on the outboard-side of the port smoke-pipe, and a green light on the outboard side of the starboard smoke-pipe. These lights to be shown both forward and aft, and also abeam on their respective sides.

For coasting steamers and those navigating bay', lakes, or other inland waters, other than ferry and those above provided for the red and green side-lights as prescribed for ocean steamers, and a central range of two white lights, the after-light being carried at an elevation of at least fifteen feet above the light at the head of the vessel, the head-light to show through twenty points of the compass, namely, from right ahead at two points abaft the beam on either side of the vessel;

46 and the after-light to show all around the horizon.

For steamers towing other vessels the colored lights will be the

same as prescribed for ocean steamers; and two white mast-lights shall also be carried vertically to distinguish them from other steamers; the white lights to show through twenty points of the compass, viz: from right ahead to two points abaft the beam on either side of the vessel. White lights shall also be placed on the extreme outside of the tow on either hand, and also on the extreme after-part of the same.

RULE 17.—A bright white light, not exceeding twenty feet afore the hull shall be exhibited by all steamers when at anchor between sunset and sunrise in a globular lantern of eight inches diameter, so placed as to show a good light all around the horizon.

WM. BURNETT,
J. J. WITZIG,
E. M. SHIELD,
ALFRED GUTHRIE,
WM. BROADFIELD,
CHARLES L. STEPHENSON,
ASOPH S. BEMIS,
HENRY G. HAZEN,
J. V. GUTHRIE,
WM. ROGERS,
Supervising Inspectors of Steamboats.

47 And, on plaintiff's motion, said defendants are ruled to answer said plaintiff's amended complaint on or the next calling of this cause.

And afterwards, at a further day of said term of said court, to wit, on the 23rd day of June, 1870—

Come the parties, and on plaintiff's motion the deposition' herein taken on his behalf are now here published.

And afterwards, at a further day of said term of said court, to wit, on the 24th day of June, 1870.

Demurrer to 1st, 2nd, 3rd, & 6th paragraphs of the complaint.

Come the parties, and, on motion, this cause is dismissed as to W. T. Pate, one of the defendants herein, and the defendants file their demurrer to the 1st, 2nd, 3rd, & 6th paragraphs of complaint, which demurrer reads as follows:

CHARLES ALLING, ADMR., }
vs. }
THOMAS SHERLOCK ET AL. }

Defts. demur to each paragraph of pltff.'s complaint severally, and assign for cause of demurrer to each of said paragraphs that the
48 same does not state facts sufficient to constitute a good cause of action herein.

WALKER AND ROBERTS,
For Defendants.

And afterwards, at a further day of said term of said court, to wit, on the 25th day of June, 1870—

Come the parties, and the court being now sufficiently advised as to the decisions that should be rendered on the demurrer heretofore filed

and submitted in this case, do overrule the same, to which ruling defendants except.

And thereupon defendants file answer herein, which reads as follows, viz:

Answer to 1st paragraph of complaint.

State of Indiana, Jefferson common pleas.

CHARLES ALLING, ADMR. OF OTIS B. SAPPINGTON, deceased, plaintiff,
vs.
THOMAS SHERLOCK & OTHERS, DEFTS. } Answer.

The defendants, for answer to the complaint filed against them, says that the injuries complained of in the said complaint occurred on the Ohio River about two miles above Warsaw, in the State of Kentucky, and in a part of the river between low-water mark on the Indiana side of the river and the Kentucky shore, and within the limits of the State of Kentucky, and wholly outside of the State of Indiana, and that the defendants are not liable therefore to the plaintiff in this action.

Answer to 2nd paragraph of complaint.

2. And the defendants, for further answer to the complaint filed against them by the plaintiffs, says, that the injury complained of in the said complaint occur'ed on the Ohio River about two miles above Warsaw, in the State of Kentucky, and in a part of the river between the Kentucky shore and low-water mark on the Indiana side of the river and within the limits of the State of Kentucky. That by an act of March 10th, 1854, of the State of Kentucky, applicable to cases of this character, and which was in full force at the time of the alleged injury, it was provided "That if the life of any person is lost or destroyed by the willful neglect of another person or persons, company or companies, corporation or corporations, their agents or servants, then the personal representatives of the deceased shall have right to sue such person or persons, company or companies, corporation or corporations, and recover ~~primitive~~ damages for the life or destruction of the life aforesaid; and that the action under said act should be commenced within one year from the time of such death.

That prior to the pas-age of said act, and aside from the provisions thereof, there was no liability whatever within the State of Kentucky for damages or loss resulting from death, or for injuries resulting in death, and that there was no liability within the State of Kentucky for the cause of action set up in said complaint, and the said defendants insist that they are not liable in this action, and specially do they insist upon the lapse of time as a bar to any action which might otherwise exist by the law of Kentucky, this action not being commenced within one year next after said alleged injury.

3. And the defendants, for further defense, say that they and each of them were at the time of the said supposed injuries citizens of the United States, and they always have been such; that their said steamers, United States and America, were built for them by citizens of the United States at Cincinnati, Ohio, & Louisville, Kentucky, and have ever since been owned by them; that at the time of

said alleged injury they were engaged with their steamboats in carrying on commerce between the several States bordering on the Ohio River between Cincinnati, in the State of Ohio, and Louisville, in the State of Kentucky, and that the said steamers were then on a trip from Cincinnati to Louisville, and Louisville to Cincinnati, aforesaid; that their said boats were engaged in such commerce under the laws of the United States relating to the coasting trade and fisheries and under the law of the United States for the better security of the lives of passengers on vessels propelled in whole or in part by steam, and under law of the United States relating to tonnage and hospital dues; that said steamers were at the time engaged in such commerce under a special license issued within one year from the time of said alleged injury
52 by the United States Government, and had been regularly inspected within six months from the time of said injury, and that the said licenses, enrollments, and inspection papers were in full force at the time of said alleged injury, and that said steamers were carrying on said commerce under and by virtue of said license, enrollments, and inspection papers; that the said steamers had been and were built, fitted up, appareled, and equipped in all respects in accordance with said laws, and had regularly paid to the Government of the United States the tonnage and hospital dues, and all other dues required by such vessels under said laws; that they were under the command of most prudent and skilful masters, and of competent and skilful officers and crews, and were in all respects river-worthy and fit to carry on successfully such commerce; that they had the necessary pilots and engineers, and were at the time under the charge of said pilots with the masters
53 and other necessary officers on watch; [that the said supposed injury occurred on the Ohio River about two miles above Warsaw in the State of Kentucky, and between the Kentucky shore and low-water mark on the Indiana side of the river, and while said steamboat was being thus employed and navigated;] that neither of said defendants was on board of or in any way engaged in the management of said boat, [nor were the said injuries in any way, directly or indirectly, the result of the want of care of the said defendants or either of them.]

4. And, for further defense to the said complaint, the said defendants say that they know nothing of the death of said Otis B. Sappington or of the appointment of said plaintiff, Charles Alling, as his administrator. They say they *they* have no knowledge of the said Sappington having been a passenger on board of the steamboat United States on the night of December 4th, 1868; nor have they any knowledge of his death, the man, as set out in the petition, and require proof of all of said allegations in the complaint.

54 The defendants deny that their officers and servants in charge of said steamboat United States, to wit, the captain and master thereof, or the pilots thereof, or either of them, or any other of their officers, so carelessly or negligently navigated and steered said steamboat, that said steamboat collided with and against the steamboat America. They deny that they were navigating said boats, the United States or America, at the county of Switzerland and within the territorial jurisdiction of Indiana above the line of low-water mark as alleged in the complaint, and they deny that the steamboat United States was burned and destroyed within the limits or jurisdictions of the State of Indiana; and if the said Otis B. Sappington was then and there suffocated and burned to death, it was not within the limits or jurisdiction of the State of Indiana.

The defendants deny that the pilot of the steamboat United States was then and there guilty of gross negligence and carelessness,
55 as set out in the plaintiff's complaint. They deny that he navigated the steamboat United States at a rate of speed exceeding 18 miles an hour down stream at the time he saw the steamboat America approaching in the night-time. They deny that the America war running at the same rate of speed. They deny that the pilot did not slacken the rate of speed of the steamboat United States, nor give any signal of alarm or danger until it was too late to avoid the said collision. They deny that the pilot of the United States saw the signal-lights of the America when the boats were two miles apart from each other. They deny that the said pilot was grossly negligent in first giving a signal with the steam-whistle of the United States for choice of sides in passing; and defendants say that, under the circumstances of their case, there was no breach committed by the pilot of the United States of any of the rules of navigation prescribed by the supervising inspectors or any act of Congress or custom of navigation of the river.

56 Defendants deny that the misunderstanding of the signals of the boats by the pilots was the result of any negligence of the pilots of the United States, and deny that said pilot persisted in navigating the United States at such high rate of speed as to produce collision, or as to bring the boats so near as alleged in the petition; and they say that said pilot did exercise due skill and care to avoid the collision, and did all in his power to avoid it by stopping, backing, and signaling; and they deny that said pilot violated any custom, rule, or law of navigation under the circumstances that surrounded him on the night and at the time of the collision.

Wherefore defendants deny that they are liable for any damage or loss to the plaintiff or to the estate of his intestate, and pray to be discharged with costs.

STATE OF OHIO,
Hamilton Co., ss:

Thomas Sherlock, one of the above-named defendants, being duly sworn, under oath says that the facts set forth in the foregoing
57 answer are true as he verily believes.

THO. SHERLOCK.

Subscribed and sworn to before me this 11th day of June, at Cin., Ohio.

R. L. FULTON,
Not. Pub., Ham. Co., O.

FIFTH.

5. And for 5th paragraph of answer, defendants deny each and every allegation of plaintiff's complaint.

WALKER AND ROBERTS,
For Deft., (except Pate.)

SIXTH.

6. And for 6th paragraph of answer, say as to part, to wit, $3,000 of the damages above claimed by plaintiff, that there was at the time of the death of said Otis B. Sappington, *there was* an insurance of $3,000 on

his life for the benefit of his said wife and children, which was paid to them in consequence of his death.

WALKER & ROBERTS,
For Deft.

SEVENTH.

7th. Paragraph of answer defendants say that the alleged negligence in navigating said boat United States & America, and the alleged
58 negligent collision of said boats, which caused the alleged death of said Otis B. Sappington, occur'ed upon said Ohio River beyond and outside of low-water mark on the Indiana side, and within the territoral limits of the State of Kentucky; that by the action of the current and motion of said steamer United States, she drifted inside said low-water mark before she sunk and before the death of said Sappington, but that the acts, if any, which caused said death, took place and were done within the territorial limits of the State of Kentucky.

WALKER AND ROBERTS,
For Defts.

Answer to 8th & 9th paragraph of complaint.

EIGHTH.

8th. The defendants say that this court has not jurisdiction over the subject-matter of this suit, because they say that the negligent act' complained of by plaintiff as causing the death of said Otis B. Sappington were done, took place, and occur'ed within the State of Kentucky, and not within the State of Indiana.

NINTH.

59 9th. And for further say that this court has not jurisdiction over the subject-matter of this suit, because they say, as alleged in complaint, they were engaged with said steamer in navigating the Ohio River and carrying on commerce betwe'n the States on said navigable river, that said steamers were domestic duly enrolled and licensed and duly equipped and manned under the provisions of the act of Congress in such cases, and that they are in the navigation aforesaid subject to be governed and controlled only by the laws of the United States.

WALKER & ROBERTS,
For Deft.

And afterwards, to wit, at a further day of said term of said court, to wit, on the 27th day of June, 1870—

Come the parties, and the plaintiff moves the court to strike out the first, 2nd, 4th, & 7th paragraphs of defendants' answer filed herein; also parts of the third paragraph; which motion reads as follows, viz:

60 *Motion to strike out 1st, 2nd, 4th, & 7th, and part of 3rd paragraph of answer.*

In the Jefferson common pleas, June term, 1870.

CHARLES ALLING, ADMR. OF SAPPINGTON, DEC.,
vs.
THOMAS SHERLOCK AND OTHERS.

The plaintiff moves the court to strike out the first, second, fourth,

and seventh paragraphs, because the facts and special denials therein contained are irrelevant and immaterial, and because the defendants have pleaded a general denial, (paragraph 5,) under which all the material allegations in said 1st, 2n', 4th, & 7th paragraphs can be given in evidence.

Also moves the court to strike out of the 3rd paragraph of said answer the following allegations: "That the said supposed injury occur'ed on the Ohio River, about two miles above Warsaw, in the State of Kentucky, and between the Kentucky shore and low-water mark on the Indiana side of the river, and while said steamboat was being
61 thus employed and navigated." Also, "Nor were the said injuries in any way, directly or indirectly, the result of the want of care of the said defendants or either of them." Which said allegations are enclosed in brackets thus [ ]; and the plaintiff moves to strike them out, because they are immaterial, and because they are argumentative denials, and covered by the general denial on file.

HARRINGTON & KORBLY,
Plff.'s Attys.

And said plaintiff also files a demurrer to 3d & 6th, 7th & 8th & 9th paragraphs of said answer, which demurrer reads as follows, viz:

Demurrer to 3rd, 6th, 7th, 8th, & 9th paragraphs of answer.

CHARLES ALLING, ADMR., &C.,
vs.
THOMAS SHERLOCK ET AL.

Comes the plaintiff and demurres to the 3rd paragraph of defendants' answer on the ground of objection, that the same does not state facts sufficient to constitute a defense to the plaintiff's complaint.

2. And also demurs to the 6th paragraph of the defendants' ans-
62 wer on the ground of objection, that the same does not state facts sufficient to constitute a defense or partial defense to plaintiff's complaint.

HARRINGTON & KORBLY,
Plaintiff's Attys.

And also demurs to the 7th, 8th, & 9th paragraphs of the defendants' answer separately and severally, on the ground of objection, that neither of said paragraphs of answer state facts sufficient to constitute a defense to the plaintiff's complaint.

HARRINGTON & KORBLY,
Plaintiff's Attys.

Which demurrer and motion are now here submitted to the court for decision, and the court, after hearing the argument of counsel, and not being sufficiently advised as to the decision that should be rendered thereon, take the same under advisement.

And afterwards, at a further day of said term of said court, to wit, on the 1st day of July, 1870—

Come the parties, and the court now being sufficiently advised as to the decision that should be rendered on the motion & demurrer here-
63 tofore submitted in this case, do order and adjudge that the motion to strike out 1st, 4th, and 7th and parts of the third paragraphs

of answer be sustained, to which defendants except, and the motion to strike out 2nd paragraph is overruled, to which plaintiff excepts, and that demurrer to the 3rd, 6th, & 9th paragraphs of answer be sustained, to which the defendants except, and overrule the same as to the 8th paragraph, to which ruling plaintiff excepts, and now here file their bill of exceptions, to wit: (This bill of exceptions is not on file among the papers.)

And plaintiff files a reply to the 2nd & 8th paragraphs of the answer.

Reply to 2nd & 8th paragraphs of answer.

CHARLES ALLING, ADMR. OF THE ESTATE OF Otis B. Sappington, dec.,
vs.
THOMAS SHERLOCK ET AL.

The plaintiff, for reply to the 2nd & 8th paragraphs of defendants' answer, say' that at the time set out in the complaint the defend-
64 ants' steamboat The United States was descending the Ohio River, to wit, above Warsaw, and that the defendants' steamer America was at said time ascending said river, and that said steamers on said river, and opposite and adjacent to the shore of said river, in the county of Switzerland, and by the carelessness of the said defendants & their employees on said steamers, did collide & run upon & against each other, and that said collision and negligence & first contact of the steamers aforesaid occurred twenty yards on the north & Indiana side of the center & thread of the stream of the Ohio River aforesaid, and two feet below low-water mark on the said Indiana side of the said river, and that, at said time of contact, the bow of the United States aforesaid was quartering past the bow of the America aforesaid & nearer the Indiana shore than the bow of the said America, and that the bow of the said America struck the larboard or Kentucky side or outer side of the said United States, and broke in her hull, and by the force of said contact did cause
65 the United States aforesaid to swing around with her bow up stream, and did set her on fire, and by the power and momentum of said collision, & by reason thereof the said steamer United States was thrown and forced & did pass thirty yards clear of and above low-water mark on the Indiana side, and in the county of Switzerland, at which point in said county she sunk to the bottom, and further says that after said steamer United States, by means of said collision aforesaid, had been forced and driven above low-water mark on the Indiana side of said river, and into the county of Switzerland, the fire and flames ignited on said United States by said collision, & while said boat was above low-water mark, in said county aforesaid, did reach to and burn said Sappington, and then and there above low-water mark as aforesaid, without any fault of said Sappington, did burn him to death, and he then and there died upon said steamer thirty feet above low water, on the Indiana side of side river, and in the county of Switzerland,
66 which is the same injury complained of in the complaint.

2ND.

2. And for a reply to the 2nd & 8th paragraphs of the answer, says said collision of the steamer United States and America took place, and said steamers came into forcible contact above Warsaw, and north of the thread and center of the Ohio River, viz, between the thread of the

river and the Indiana shore of said river, and thirty feet nearer the shore of the said river in Switzerland , in the State of Indiana, than the thread and center of said stream is and was, and all the injuries to said Sappington were given, and his death was caused and took place, more than thirty feet nearer the Indiana shore, in said county of Switzerland, than the center and thread of said river, and above the said thread of said river on said Indiana side, and said negligence and injuries and death took place in said county of Switzerland and
67 in the State and jurisdiction of Indiana State, which are the same injuries complained of.

HARRINGTON & KORBLY, *Attys.*

Third paragraph of reply.

3RD PAR.

The plaintiff, for further reply to the several answers of the defendant, says he denies each and every allegation therein contained.

Wherefore, &c.

HARRINGTON & KORBLY,
Plff.'s Atty.

Continuance.

And afterwards, at a further day of said term of said court, to wit, on the 7th day of July, 1870—

Come the parties, and the plaintiff now here moves the court for a continuance of this cause, and file' affidavits in support of said motion; which affidavits being seen and examined by the court, and the court being sufficiently advised in the premises, dor oder that said cause be continued until next term, and that the defendants pay the cost of the term.

And afterwards, to wit, at the December term of said court, to wit, on the 19th day of December, 1870—

68 Come the parties, and upon motion the depositions on file in this cause are ordered to be published, which is accordingly done.

And afterwards, at a further day of said term of said court, to wit, on the 21st day of December, 1870—

Come the parties, and defendants file demurrer to 1st & 2nd paragraphs of plaintiff's reply herein; which reads as follows, to wit:

Demurrer to 1st & 2nd paragraph of reply.

ALLING, ADMR.,
vs.
SHERLOCK ET AL.

The defendants demur to the first and second paragraph of plaintiff's reply herein, and assign for cause of demurrer as to each of them that the same does not state facts sufficient to constitute a good cause of reply.

WALKER & ROBERTS,
For Defts.

And afterwards, at a further day of said term of said court, to wit, on the 22nd day of December, 1870—

Come the parties, and, on plaintiff's motion, a rule is granted on
69 the sheriff of Switzerland County to show cause why the subpœnas issued on behalf of plaintiff have not been returned, and that a copy of this rule be sent to the coroner of Switzerland County to serve on said sheriff to show cause, if any he can, why said subpœnas were not returned according to law.

And afterwards, at a further day of said term of said court, to wit, on the 24th day of December, 1870—

Come the parties, and the demurrers heretofore filed is now submitted to the court for decision, and the court, after hearing the argument of counsel, and not being sufficiently advised in the premises, do take the same under advisement.

And afterwards, at a further day of said term of said court, to wit, on the 28th day of December, 1870—

Come the parties, and the court being now sufficiently advised as to the decision that should be rendered on the demurrer heretofore filed and submitted, do overrule the same; to which ruling the de-
70 fendants except, and now file their bill of exceptions herein as to the ruling of the court heretofore made upon motion of plaintiff to strike out part of their answer, which is signed by the court and made part of the record, and reads as follows, viz:

Bill of exceptions.

In the Jefferson County court of common pleas, June term, 1870.

CHARLES ALLING, ADMR. OF OTIS B. SAPPINGTON, dec'd,
vs.
THOMAS SHERLOCK ET AL.

Be it remembered that, in the progress of said cause, at said term, the plaintiff moved the court to reject and strike out answers and parts of answers by defendants filed herein, to wit:

In the Jefferson common pleas, June term, 1870.

CHARLES ALLING, ADMR. OF SAPPINGTON, DECEASED,
vs.
THOMAS SHERLOCK ET AL.

71 The plaintiff move' the court to strike out the first, second, fourth, and seventh paragraphs, because the facts and special denials therein contained are irrelevant and immaterial, and because the defendants have pleaded a general denial, (paragraph 5,) under which all the material allegations in said 1st, 2nd, 4th, & 7th paragraphs can be given in evidence.

Also moves the court to strike out of the third paragraph of said answer the following allegations:

"That the said supposed injury occur'ed on the Ohio River, about two miles above Warsaw, in the State of Kentucky, and between the Ken-

tucky shore and low-water mark on the Indiana side of the river, and while said steamboat was being thus employed and navigated;" also,

"Nor were the injuries in any way, directly or indirectly, the result of the want of care of the said defendants, or either of them."

Which said allegations were enclosed in brackets, thus [ ], and the plaintiff moves to strike them out, because they are immaterial,
72 and because they are argumentative denials, and covered by the general denial on file.

HARRINGTON & KORBLY,
Plff's Attys.

Which motion the court sustained, and struck out the first and fourth paragraphs of answer, and that part of the 3d paragraph of answer, commencing with line 17, to and including line 24th, and line 27th to line 29th; also, the court struck out whole of the 7th paragraph of answer. To all of which the defendants did at the time except, and do*es* except, and time was given until this term to prepare a bill of exceptions thereof, making said rulings of the court a part of the record; which bill of exceptions is now here prepared, and is signed by the court and ordered to be made part of the record herein.

SCOTT CARTER, *Judge.* [SEAL.]

And afterwards, at a further day of said term of said court, to wit, on the 29th day of December, 1870, come the parties, and the defendants file motion to suppress the deposition of Ann E. Burton;
73 which motion reads as follows, to wit:

Motion to suppress deposition of Ann Lee Burton.

ALLING, ADM'R OF SAPPINGTON,
vs.
SHERLOCK ET AL.

The defendants move the court to suppress and strike out the following parts of the deposition of Ann Lee Burton, taken by plaintiff at Madison, Dec. 13th, 1870, to wit, questions and answers:

Questions 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, of examination-in-chief, because the same is immaterial and wholly irrelevant.

Also to suppress questions and answers 12, 13, 14, 17, 18, 19, & 20 of the cross-examination, because it is wholly based on said questions in chief asked to be suppressed, and should be struck out with those answers.

WALKER & ROBERTS,
For Defts.

And afterwards, at a further day of said term of said court, to wit, on the 2nd day of January, 1871,—

Come the parties, and the motion to suppress the deposition of
74 Ann E. Barton, heretofore filed in this case, is now submitted to the court; and the court, after hearing the argument of counsel, and not being sufficiently advised in the premises, do take the same under advisement.

The defendants also move the court for leave to file an additional paragraph No. nine, in abatement to their answer, which motion is by the court overruled; to the overruling of which motion defendants except*s*, and time is given them to file exceptions; which bill of is now here filed, and reads as follows, viz:

Bill of exceptions.

Jeff. com. pleas, Dec. term, 1870.

ALLING, ADMR. OF SAPPINGTON,
vs.
SHERLOCK ET AL.

Be it remembered that, on Monday, the 13th judicial day of the present term of court, defendants moved the court for leav to file an additional 9 paragraph of answer herein, which reads as follows, to wit:

CHARLES ALLING, ADMR. OF OTIS B. SAPPINGTON, deed.,
vs.
75 THOMAS SHERLOCK ET AL.

The defendants, for further and 9th paragraph of answer herein, says said plaintiff, on the 8th day of January, 1870, fully settled his administration of said estate in this court, and was on his own motion discharged from the further execution of his trust as such administrator on payment of costs.

Therefore he is not entitled to maintain said action.

WALKER AND ROBERTS,
For Defts.

Charles E. Walker, agent and atty. for defts., swears that the matters and things stated in the foregoing paragraph of answer are true, as he believes.

C. E. WALKER.

Subscribed and sworn to in open court, Jan'y 2, 1871.

J. J. SERNIG, *Clerk.*

And the plaintiff objected to the filing of said 9th paragraph of answer after the case is at issue and set for trial to morrow, & is offered too late, and because it does not appear, from the plea offered,
76 that said administrator has paid the costs according to the order of the court, the court overruled said motion, though defts.' attys. stated said matters had only come to their knowledge this morning; to which ruling of the court the defendants at the time excepted, and do except, and file this bill of exceptions, which is signed by the court, and made part of the record in this cause.

SCOTT CARTER, *Judge.* [SEAL.]

And afterwards, at a further day of said term of said court, to wit, on the 3rd day of January, 1871—

Come the parties, and the court being now sufficiently advised as to the decision that should be rendered on the motion heretofore submitted to suppress part of the deposition of Ann E. Burton, on file in this case, do sustain as to part, and overrule as to part; to which ruling defendants except, and file their bill of exceptions herein, to wit:

77 Com. pleas, Jeff. County, Dec. term, 1870.

ALLING, ADMR. OF SAPPINGTON,
vs.
SHERLOCK ET AL.

Bill of exceptions.

Be it remembered that at said term of court defendants filed the following motion to suppress part of the deposition of Ann Lee Burton:

ALLING, ADMR. OF SAPPINGTON,
vs.
SHERLOCK ET AL.

The defendants move the court to suppress & strike out the following parts of the deposition of Ann Lee Burton, taken by plaintiff at Madison, Dec. 13th, 1870, to-wit: questions and answers. Questions 11, 12, 13, 14, 17, 18, 19, 20, 21, 22 of examination-in-chief, because the same is immaterial & wholly irrelevant. Also, to suppress question' and answer' 12, 13, 14, 17, 18, 19 & 20, because *it is* wholly based on said questions in chief asked to be suppressed, and should be struck out with those answers.

WALKER & ROBERTS,
For Defts.

And the court sustained said motion, and suppressed the following parts thereof:

"21. Ques. What was her bodily condition with reference to her
78 being sober?

"Ans. I believe she was drink all evening. I took her to be drink; and the passengers took her to be drunk, and made remarks about it, and asked me who she was.

"22. Ques. State whether or not you saw her take any intoxicating liquors.

"Ans. I saw them carrying punches to her several times during the evening."

And overruled said motion as to the following parts of said deposition:

"11. Int. From what part of the cabin did you see Captain Wade come?

"Ans. From the back part of the ladies' cabin, room No. 33; that is where he started from.

"12. Ques. In what direction did he go?

"Ans. Forward.

"13. Ques. How soon after the two boats struck did you see Captain Wade come out of room No. 33?

"Ans. Right away—forthwith.

79 "14. Ques. How near were you standing to room No. 33?

"Ans. I was right opposite, near the room 37 & 38; he was on the right-hand side of me, and I was on the left-hand side. At that time the boat had turned around.

"17. Ques. State who occupied room No. 33, on the United States, that night, if you know.

"Ans. Mrs. Pearce occupied it.

"18. Ques. What Mrs. Pearce?

"Ans. Mrs. Pearce, of Louisville.

"19. Ques. State if you saw any one else come out of that room that night after Captain Wade came out.

"Ans. I saw no one but her. She came out during the fright. I mean Mrs. Pearce.

"20. Ques. What was the condition of Mrs. Pearce that night?

"Ans. She came out about half dressed—like anybody would in a case of that kind.

"12. X-ques. You say in your examination-in-chief that he came out of room 33; did you see him come out?

80 "Ans. Yes, I saw him run out of there.

"13. X-ques. Did he leave the door open or shut it?

"Ans. I don't know.

"14. X-ques. How long was that after you raised the alarm?

"Ans. It was done all at one time; when I run around hadn't time to consider anything. He came out as the boat collided, and he either passed me or I passed him.

"14. X-int. How long after Captain Wade came out of 33 until Mrs. Pearce came out?

"Ans. It was not more than two minutes, or a minute; everybody was out together.

"18. X-int. Who occupied room 33 besides Mrs. Pearce?

"Ans. No one as I know of.

"19. X-int. Did not her little boy occupy it?

"Ans. No; she told me she was going to put the boy in the next

81 berth. That's what she said; don' know only what Mrs. Pearse told me; did not go to see.

"20 X-int. Where was No. 33 in ladies' cabin? Was it at the lower or upper cabin?

"Ans. It was in the lower cabin—first cabin."

To which last ruling of the court, in refussing to suppress said parts of said deposition, the defendants did at the time except, & file this bill of exceptions thereto, which is signed by the court and make part of the record in this case.

SCOTT CARTER, [SEAL.]
Judge.

Affidavit for change of venue.

And thereupon said defendants moved the court for change of venue herein, and in support of said motion make and file affidavits herein, which read as follows, to wit:

In the Jefferson court of common pleas, Indiana.

CHARLES ALLING, ADMINISTRATOR OF OTIS B. SAPPINGTON, deceased,
vs.
82 THOMAS SHERLOCK, CHRISTOPHER G. PEARCE, ZACHARIAH M. SHIRLEY, MOSES ANDREW, FRANK CARTER, D. L. BENEDICT, WILLIAM C. HITE, THOMAS GAFF, PATRICK ROGERS, defts.
} Motion & application for change of.

Affidavit of C. G. Pearce.

STATE OF OHIO,
Hamilton County, ss:

CHRISTOPHER G. PEARCE, one of the defendants, being duly sworn

deposes and says that the opposite party to said defendants, viz, Charles Alling, administrator of Otis B. Sappington, dec'd, has an undue influence over the citizens of said Jefferson County, and that an odium attaches to these applicants, the said defendants, and to their cause of defense, on account of local prejudice.

This affiant says that this is the first and only application for change of venue made by said defendants. This affiant further says
83 that he only found out the facts stated herein this day for the first time.

C. G. PEARCE.

Subscribed in my presence and sworn to before me this 31st day of December, A. D. 1870.

R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

CHARLES ALLING, ADMINISTRATOR OF OTIS B. Sappington,
vs.
THOMAS SHERLOCK & OTHERS.

Robert T. Riley, agent for the defendants, swears that the defendants cannot have a fair and impartial trial of said cause in Jefferson County for the following reasons, to wit: First, the plaintiff has an undue influence in said county over the citizens thereof; second, because an odium attaches to the defendants and their course of defense herein on account of local prejudice, and that it was not known to affiant or defendants until yesterday that said undue influence existed or said odium
84 attached to their defense by reason of said prejudice; all of which he says he verily believes; and he makes this affidavit for and on behalf of defendants, and as their authorized agents.

ROBERT T. RILEY.

Subscribed and sworn to in open court January 3rd, 1871.

J. J. SENNIG, *Clerk.*

Which motion is submitted to the court, and the court, after hearing the argument of counsels, and not being sufficiently advised in the premises, do take the same under advisement.

And afterwards, at a further day of said term of said court, to wit, on the 4th day of January, 1871, now, at this time come the parties, and the plaintiff makes and files his in writing to suppress the deposition of Christopher G. Pearce; which motion is in the words and figures following, viz: (This motion is not on file among the papers.)

Which motion is submitted to the court, and the court not being sufficiently advised in the premises, take the same under advisement, and time is given.

85 And the defendants now file their motion in writing; which motion reads as follows, viz:

Motion to re-examine witnesses.

CHARLES ALLING, ADMINISTRATOR OF SAPPINGTON,
vs.
THOMAS SHERLOCK ET AL.

The defendants move the court to grant leave to them to recall witnesses whose depositions have been taken in this case, and examine

them on some additional points in the case not developed or known when the depositions were taken, to wit: Cap. R. M. Wade, Cap. David Whitten, J. M. Turpin, Jacob Remelin, N. B. Jenkins.

WALKER AND ROBERTS, *for Defts.*

And Mr. McCanomot, Slapleton Densford, Boyd Gaff, & Oliver P. Noble.

WALKER AND ROBERTS, *for Defts.*

For leave to further examine R. M. Wade, William Turpin, Joseph McCounnant, Slepleton Densford, Boyd Gaff & Oliver P. Noble,
86 and whose depositions are on file in this case, and the court being sufficiently advised, do order that the defendants may further examine said witnesses on points not heretofore examined to in their said depositions.

And the court being now sufficiently advised as to the judgment that should be rendered on the plaintiff's motion to suppress the deposition of Christopher G. Pearce, herein do sustain said motion, and suppress said deposition; to sustaining of which motion the defendants except, and not file their bill of exceptions, to wit:

Bill of exceptions.

CHARLES ALLING, ADM'R OF SAPPINGTON,
vs.
THOMAS SHERLOCK.

Be it remembered that on the 15th judicial day of the term of the Jefferson common pleas court for December, 1870, the plaintiff filed the following motion, to wit, (this motion is not on file among the papers,) to suppress the deposition of Christopher G. Pearce, taken by defendants in this
87 suit, because he is one of the defendants, and the court sustained said motion, and suppressed said deposition; to which ruling of the court the defendant did at the time except, and do except, and file this bill of exceptions, which is signed by the court and made part of the record in this cause.

Jan'y 4th, 1871.

SCOTT CARTER, *Judge.*

And the court being now sufficiently advised as to the judgment that should be rendered on the defendant's motion heretofore filed to change the venue of this cause, do sustain said motion, and order that the venue be changed to the county of Switzerland, and that the clerk of this court make out a transcript of all the proceedings had in this court in this cause, and properly certify the same, and transmit the same to the clerk of said Switzerland County, said certified transcript, and all the papers on file in this case, upon the payment of all the costs by the defendants herein occasioned by said change of venue.

STATE OF INDIANA,
Jefferson County:

88 I, James J. Sering, clerk of court of common pleas in and for said county, do hereby certify that the foregoing is a full, true, correct, and complete transcript of the record of the proceedings had in the foregoing entitled cause.

Witness my hand and seal of said court, at Madison, this 27th day of January, A. D. 1871.

[L. S.] JAMES J. SERING, *Clerk.*

And afterwards, to wit, at the March term, 1871, of the Switzerland court of common pleas, on the 1st judicial day of said term, that being the 13th day of March, 1871, the following proceedings were had in this cause, viz:

Parties come, and on motion the depositions of William A. Collins and Thomas J. Cogley on file herein are published.

And afterwards, to wit, on the second judicial day of said term, to wit, the 14th day of March, 1871, the following further proceedings were had in said cause, viz:

89 Come the parties, and the plaintiff moves the court to strike from the files and reject the deposition or sworn statement of R. M. Wade, taken and made in the county of Hamilton, State of Ohio, on the 13th day of March, 1871, and files his reasons in support thereof, as follows, to wit:

Motion to suppress deposition of R. M. Wade.

CHARLES ALLING, ADM'R, &C.,
vs.
THOMAS SHERLOCK ET AL.

Pl'ff moves the court to reject from the files of the court the papers filed as the deposition of R. M. Wade—

1. Because the same was taken in a case in Jefferson County common pleas court.
2. Because taken during term and without leave of the court, and taken without notice.
3. Because it does not appear where in Hamilton County it was taken, and it does not appear in what case the witness was sworn.
4. The same having been taken privately in term time, without notice, & taken in a court in which the action is not pending, and brought into court by the defendants, it is not a deposition.

90 HARRINGTON & KORBLY, *Plff's.*

Which motion being submitted to the court, and the court having heard the arguments of counsel, and being fully advised in the premises, do sustain the same, and strike said deposition from the files of this court; to which the defendants except, and file their bill of exceptions, viz:

Bill of exceptions.

In the Switzerland court of common pleas. March term, 1871.

CHARLES ALLING, ADM'R OF OTIS B. SAPPINGTON, DEC'D,
vs.
THOMAS SHERLOCK ET AL.

Be it remembered that on the 14th day of March, 1871, in said court, at said term, the plaintiff made the following motion to reject and strike from the files of this case the deposition of R. M. Wade, taken on the 13 inst., at Hamilton County, Ohio:

CHARLES ALLING, ADMINISTRATOR, &C.,
vs.
THOMAS SHERLOCK ET AL.

Plff. moves the court to reject from the files of this court the
91 paper filed as the deposition of R. M. Wade—

1. Because the same was taken in a case in Jefferson County common pleas court.

2. Because taken during term and without leave of the court, and taken without notice.

3. Because it does not appear where in Hamilton County it was taken, and it does not appear in what case the witness was sworn.

4. The same having been taken privately, in term time, without notice, and taken in a court in which the action is not pending, and brought into court by defendants, it is not a deposition.

HARRINGTON & KORBLY, *Plffs.*

Which motion the court sustained, and struck said deposition from the files; to which defendants except. Said deposition and certificate is as follows:

R. M. Wade's deposition.

The deposition of Capt. Richard M. Wade, taken before me, R. T. Fries, a notary public within and for the county of Hamilton, in the State of Ohio, on the 13th day of March, in the year of our Lord one
92 thousand eight hundred and seventy-one, between the hours of 8 a. m. & 6 p. m. in said county, (Mr. Douglas, opposing counsel at Cincinnati, being notified but not appearing to cross-examine,) to be read in evidence on behalf of the defendants in the action now pending in the Jefferson court of common pleas, where Charles Alling, administrator of Otis B. Sappington, deceased, is plff., and Thomas Shirlock et al. are defendants.

RICHARD M. WADE, of lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

I reside in Covington, Kentucky; I am now master of the steamboat Rob'rt Mitchell, running from Cincinnati to New Orleans, and am no longer connected with the Mail-Line Company. My boat is now lying at the foot of Sycamore street, in Cincinnati, and I am compelled to leave here to-morrow evening for New Orleans, and cannot stop at Vevay, Indiana. On the last trip I could only get to Louisville
93 with my boat, she being too large to get above the falls.

I received letters from the Mail-Line Company and also from Mr. Lincoln, urging me to come here last trip and give my testimony, but my business was such that I could not possibly leave. I wrote back that I would come here this trip for that purpose, and I did come here as soon as I could for that purpose.

I was not in Mrs. Pearce's room during that night. I had known her as occasionally traveling on the boat for several years. She had two sons with her, and I think, though he is not certain, that either one or the other of them occupied the same room with her. She and one of her boys was lost. The clerk would know better about that. I was down in the lower cabin the last time before the collision, about fifteen or twenty minutes or a short time before it happened. I went down to put a stop to some noise. They were sort of serenading and making most too much noise, I thought, for that time of night, and I requested them to stop on account of the railroad-passengers, who had gone to bed.
94 At the time of the collision I was on the hurricane-roof forward of the chimneys. I had just returned from the foot of the stairs leading down forward of the barber-shop toward the water-closet, on

the outside guard, as I have stated in my former deposition, but had not gone into the cabin at that time.

The boats come together slightly quartering, but nearly head on. The blow or force of the collision would perhaps press them a very little, and but a very little, nearer the Indiana shore. After the collision, in our efforts to get the boat and passengers ashore, the boats got some 60 to 75 yards nearer shore than they were at the time of the collision. Where she sunk it was navigable for boats of her class at that time; there was room for a boat to have run between her and the Indiana shore. Boats do sometimes run in there. I think where she sunk there would be water around her in low water.

R. M. WADE.

STATE OF OHIO,
County of Hamilton, ss:

95 I, E. T. Fries, do hereby certify that Richard M. Wade was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed as above set forth was reduced to writing by myself and read to the witness in the presence of the witness, and was subscribed by the said witness in my presence, (Mr. Lincoln, for defts., being present; Mr. Douglass being notified to cross-examine, but not appearing;) that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In witness whereof I hereunto subscribe my name and affix my official seal this 13th day of March, A. D. 1871.

[L. S.]

E. T. FRIES,
Notary Public, Hamilton Co., Ohio.

Also, plaintiff moves the court to suppress the deposition of T. D. Lincoln in this case, taken by defendants, which motion is as follows,
96 (this motion is not on file among the papers:) And the court sustained said motion as to the evidence-in-chief of said Lincoln, and overruled the same as to the cross-examination, & defts. objecting to the motion, & especially to suppressing the cross-examination, to which defendants except. Said deposition is as follows:

T. D. Lincoln's deposition.

T. D. LINCOLN, of sound mind and lawful age, being be me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the said cause, deposes and makes the following statement under oath, to wit:

I will state that one of the principal objects of taking these depositions was to ask Capt. R. M. Wade a few questions in relation to where he was when the collision took place, and a few other questions.

We made every effort to get him here at the last time we took
97 depositions here in this case, but could not succeed. This notice was served under the impression that we could get him here to take his deposition yesterday, to-day, or to-morrow morning.

I learn that he cannot get here until Saturday, and am informed that that will be too late to keep these depositions open, and we are therefore compelled to close under this notice without taking his deposition.

Cross-examination, question by Mr. Douglas:

Was you acquainted with the chambermaid of the United States at

the time of the collision or before? If so, how long did you know her, and during your knowledge of her, was she a woman, from her general reputation, to your knowledge, to be believed under oat?

Ans. I never knew her, and never heard of her until I heard she had testified in this case. Since which time I have learned some things about her which, if desired, I will state.

T. D. LINCOLN.

And to all of which the defendants except, and file this bill of
98 exceptions, which they pray may be signed and made part of the record in this case; which is done.

March 15, 1871.

SCOTT CARTER, *Judge.*

Plaintiff also move' to suppress the deposition or sworn statement of T. D. Lincoln, taken at Cincinnati, in the State of Ohio, on the day of , 1871, because the same is irrelevant and immaterial. Which being submitted as the examination-in-chief, to which the defendants except, and file their bill of exceptions.

And to overrule said motion as to the cross-examination, to which plaintiff excepts.

Thereupon the defendants file a motion to suppress the depositions, as follows, to wit:

Motion to suppress depositions.

Switzerland common pleas, March term, 1871.

CHARLES ALLING, ADMR. OF OTIS B. SAPPINGTON,
vs.
THOMAS SHIRLOCK ET AL.

The defendants move the court to suppress questions and an-
99 swers No. 7, page 96, in the cross-examination of James Holmes, in his deposition taken at Cincinnati, Ohio, on the 19th day of February, 1871, on defts.' behalf, because the testimony elicited thereby is immaterial and irrelevant.

And to suppress questions and answers Nos. 8, 9, 10, 11, 12, 13, 14, & 15, of the cross-examination of R. J. Harrison, in his deposition taken at Cincinnati, Ohio, on the 20th day of February, 1871, on defts.' behalf, because the same is irrelevant, unimportant, & immaterial.

Also to suppress questions and answers, cross-examination of Oliver H. Noble, No. 7, page 112, same deposition, taken Cincinnati, February 21st, 1871, because the question assumed a fact not in evidence, and which is also immaterial.

Also, to suppress question and answer No. 15, of cross-examination of Jacob Remelin, page 121, same deposition taken at Cincinnati, Feb. 22, 1871, on deft. behalf, because the same is not cross-examination as to anything brought out by defendants' examination, this being the
100 retaking of Romelin's deposition to certain points, and it is irrelevant.

Also, to suppress question and answer No. 2, in cross-examination of T. F. Eckert, in same deposition taken at Cincinnati, Ohio, Feb. 22, 1871, on page 129, because it is immaterial and irrelevant.

Also, cross-examination and answer No. 3, 4, & 5, for the same reason.

Also cross-question 15 & answer, same deposition, page 134, for the same reason.

Also No. 16, 17, & 18, for same reasons.

Also question 2 of re-examination of the other was suppressed because it is *is is* founded on the page 136. Also questions one and 2, in recross-examination, because immaterial.

Also to suppress cross-question No. 7, page 142, of Oliver H. Noble's deposition, recalled, taken at Cincinnati, Ohio, February 23rd, 1871, because it assumes facts not proved by the witnesses, and is irrelevant & leading. Also, in same deposition, cross-question No. 9 & answer, because it assumes facts not in evidence, is leading, and immaterial.

Defendants also move to suppress the deposition of B. T. Beall
101 & John Fathargill, taken by plaintiff, at Warsaw, Kentucky, on the 24th day of February, 1871, because of the insufficiency of notice & certificate.

And because, before the service of said notice, to wit, on the 10th day of February, 1871, the defendants had served notice on the plaintiff that they would take deposition on the 14th day of February, 1871, and to continue from day to day (Sunday excepted) at Cincinnati, Ohio, until taken, and they were yet proceeding in the taking of their depositions at Cincinnati, Ohio, up to and on the 24th day of February, 1871, as appears by the depositions taken under said notice, now on file in this cause, and published in this court, & which deposition & notice are referred to hereby, as part of this motion. And the certificate does not show that the deponents subscribed or signed said depositions.

WALKER & ROBERTS & ALLISON,
For Defts.

Which, being submitted to the court, is taken under advisement.

Thereupon the plaintiff files a motion to suppress depositions,
102 as follows, to wit:

Motion to suppress depositions.

CHARLES ALLING, ADMR. OF SAPPINGTON, deceased,
vs.
THOMAS SHERLOCK, MOSES ANDREW, C. G. Pearce.

The plaintiff moves the court to suppress the parts of the depositions of the following-named witnesses, to wit:

Questions and answers thereto numbered 2, 3, 4, 5, 6, 11, 12, 13, 14 of William M. Turpin, taken by defendants at Cincinnati, on February, 1871, for the reason the same matters were testified about in former depositions.

As to question six and answer & question 11 & answer, same witness, for the reason that the question called for & the answers give conclusions & opinions and not facts. Also the plat referred to by said witness, because said plat is not in any manner authenticated.

Question 5 & answer of Charles J. Marshall and diagram referred to, because the same gives conclusions and refers to plat not authen-
103 ticated, and alters and adds to said plat.

Also, question 14 & answer thereto of same witness, because the question calls for an opinion & conclusion; which was given.

Also, questions and answers No.' 2 & 3 of the witness Eckert, because he gives opinions and is not shown to have skill; also, because he gives conclusions, not facts.

Also, questions 2, 3, 5, 6, & 7 of Palmer's deposition, and answers thereto, because they call for and give conclusions, not facts, and because witness is not shown to have skill.

HARRINGTON & KORBLY,
Plff's Att s

Which, being submitted to the court, is taken under advisement.

And afterwards, to wit, on the 3rd judicial day of said term of said court, to wit, the 15th day of March, 1871, the following further proceedings were had in said cause, viz:

Motion to suppress depositions.

Come the parties, and the defendants file the following motion
104 in writing (not on file) to suppress parts of the cross-examination of defendants' depositions, taken at Cincinnati, Ohio, from F'br'y 14, 1871, to February 24th, 1871, and the deposition of Beall & Fathergill, taken by the plaintiff at Warsaw, Kentucky, Feb. 24th, 1871, which motion the court sustained in part, as to said deposition, taken at Cincinnati, and suppressed the following parts of said deposition; and the court, pending the motion to suppress the depositions of said Beall & Fathergill, allowed the plaintiff, over defendants' objections, to prove by parol that said witnesses signed said depositions after the same had been read over to them, and in the presence of the officer taking the same, at the time thereof; and to file an affidavit of the stating said facts proved by parol, which affidavit reads as follows, to wit:

STATE OF INDIANA,
County of Switzerland, ss:

CHARLES ALLING, ADMINISTRATOR OF Otis B. Sappington, deceased,
vs.
THOMAS SHERLOCK ET AL.

Henry W. Harrington, being duly sworn, on oath deposes and says that he is one of the plaintiff's attorneys in said cause; that he
105 was present during all the taking of the depositions of G. F. Beall and John Fathergill, at Warsaw, Galletin County, Kentucky, on the 24th day of February, 1871; that deponent saw and heard the officer who took said deposition read over to each of said witnesses separately his deposition carefully in the presence of Mr. Warmock, defendants' attorney, and in deponent's presence, and said witnesses severally subscribed each his own deposition after the same had been carefully read over to him by said clerk who took the same.

And the signatures appended to said depositions on file in this court in this cause are the genuine signatures of said witnesses. Said Warnock may possibly have stepped out of the room when the autograph was written by witness Fathergill, but deponents thinks he saw both sign the deposition. Deponent was plaintiff's atty. there.

HENRY W. HARRINGTON.

Subscribed and sworn to before me this 15th day of March, 1871.
ALFRED ROUS, *Clerk.*

106 And defendants excepted to said proofs, and the court overruled said motion to suppress said depositions of Beall and Fathergill, and defendants excepted to the refusal to suppress said Beall & Fathergill's deposition only, and files a bill of exceptions, as follows, to wit:

(This bill of exceptions is not on file among the papers in this case, and cannot be found.)

And thereupon defendants file an affidavit for a continuance of this cause, as follows, to wit:

Affidavit for continuance.

In Switzerland com. pleas, March term, 1871.

STATE OF INDIANA,
County of Switzerland:

CHARLES ALLING, ADM'R OF OTIS B. SAPPINGTON, dec., *vs.* THOMAS SHIRLOCK ET AL. } Civil action.

Christopher G. Pearce, one of said defendants, being first duly sworn, on his oath says that Robert Nelson is a competent, disinterested, and material witness for the defendants in the trial of the above-en-
107 titled action, without whose testimony defendants cannot safely go to trial in the above cause.

That said witness will testify that he was a professional river-pilot; that he was a passenger on the steamer United States on the night of the 4th of December, 1868, at the time of the collision, and that the collision occur'ed on the Ohio River within the boundary of Kentucky, and that said steamer United States at the time of the collision was not at or near the Indiana shore until she was run towards the same after the collision for the purpose of trying to save the passengers on board said steamer.

That said witness left the city of Cincinnati, Ohio, where he then resided about one year after the accident, and before this suit was commenced, since which time defendants could not and did not ascertain where said witness was, or where he resided, although they made diligent inquiry and search for him by writing and making personal inquiry for him, till, about ten days ago, they learned for the first time
108 that said witness resided in or near Oil City, in the State of Pennsylvania, but did not then learn his location with sufficient certainty to direct their attorneys at Madison where to give a notice to take this deposition. That the facts that the defendants expect to prove by said witness, as above state', this affiant believes to be true, and he knows no other witness by whom defendants can prove the same facts so fully, whose testimony defendants can so readily procure; that defendants can procure the deposition of said witness to be used on the trial of this cause by the next term of this court.

Affiant further says that the absence of said witness has not been procured by the act or connivance of the defendants, nor by others at their instance or request, nor with their knowledge or consent.

Affiant further swears that Richard M. Wade is a competent, disinterested, and material witness for the defendants on the trial of the above-entitled cause, without whose testimony they cannot safely go

to trial. That it is in evidence, by deposition on file, which defendants believe will be used by plaintiff in this cause, of *on* Lee Burton, who testifies that just after the collision between the steamers United States and America she saw said Richard M. Wade (who was then and there captain of and in command of said steamer United States) come out of room number 33, in the ladies' cabin, which room was at that time occupied by one Mrs. Pearce, Louisville, Ky. Affiant says that defendants can prove by said witness Wade that he was not in Mrs. Pearce's room that right, and that he was not in room number 33 in the ladies' cabin of the steamer United States that night, but that he was on watch all night, up to the time of the collision, and that about fifteen minutes before the collision he had gone into the cabin of said boat to suppress a noise that was being made there, and that at the time of the collision he was on the hurricane-roof of the boat aforesaid, on watch; that, after the collision, in the efforts of the officers to get the steamer United States and passengers ashore, the boat got some sixty or seventy yards nearer the Indiana shore than they were at the time of the collision; that at the place where the steamer United States sunk the river was navigable for boats of the largest class, navigating the Ohio River; that there was room for a boat of their size to run between the United States and the Indiana shore; that boats do sometimes run in there, and that the place where the steamer United States sunk was south of low-water mark, on the northern or Indiana side of the Ohio River.

Affiant further says that the deposition of said witness Ann Lee Burton was taken on the 12th day of December, 1870, and since the first deposition of R. M. Wade, on file in this case, was taken, said facts that defendants expect to prove by said witness, affiant believes to be true, and he knows of no other witness by whom defendants can prove the same facts, and whose testimony can be as readily procured; that said witness resides in Covington, Kentucky, but that he is commander of the steamer Robert Mitchell, and not in the employment or service of the defendants; that the steamer Robert Mitchell runs from Cincinnati, Ohio, to New Orleans, in the State of Louisiana, and that at the December term, 1870, of the Jefferson common pleas, and just before the venue in this case was changed to this county, there was an order made by said court that defendants might retake the deposition of said Wade as to the points not before testified upon by him, the matter testified to by said Burton not being known by said affiant or defendants at the time of taking the deposition of said Wade, which was taken before said Burton's deposition was taken; that ever since the adjournment of the said Jefferson County common pleas court, on the day of January, 1871, defendants have used all the diligence they were masters of to find a time and place where said witness would stop long enough, that they might give notice and take his deposition, but that they have been unable to do so till the 13th day of this month, and that the same has been suppressed by the court, because no sufficient notice was given of the taking of the same. Affiant refers to said deposition of said Wade, last taken, and makes it a part of this affidavit, to show the materiality of his evidence and the impossibility of taking it before. He says that said Wade left home about the middle of January, 1871, and has not been home since, until last Saturday evening.

Affiant further says that defendants have used all reasonable exertion to procure the personal attendance of said witness on the trial of this

cause, at this term of this court, but that they have been unable to do so.

Affiant says that if the cause is continued until the next term of this court, defendants can either procure the personal attendance of said witness or his deposition, to be used at the trial of this cause at the next term of this court.

Affiant further says that the absence of said witness has not been procured by the act or connivance of the defendants, nor by
113 others at their instance or request, nor with their knowledge or consent, and that this application is made for justice only. All of which he verily believes.

C. G. PEARCE.

Said Pearce further says that since preparing and signing the foregoing affidavit the court has announced a ruling and decision suppressing part of the depositions of Oliver Palmer, of Covington, Kentucky, and Thomas T. Eckerts, of Cincinnati, Ohio, striking out and suppressing all that is material of the examination-in-chief of Palmer, and the most material part to defendants of Eckert's deposition. He says that said persons are skilled in the business of boating, and able to give opinions as 'killed witnesses, as he believes from an examination of the breaks of the sunken steamer, from collision with another boat, of the position of the ascending and descending boats, and pretty accurately of the degree of the angle of the respective boats, and how they came together; that those witnesses are the only persons of skill of
114 whom he is aware who made an examination of said steamer United States; that their depositions were taken in good faith by competent counsel, and said point is, as he is advised, a most material one in defense of this case; that defendants are taken by suprise by the suppression of said depositions, and ask, in justice, that the case be continued to retake said depositions. Said witnesses are resident men, as stated in their depositions, and their evidence can be had by next term of this court.

C. G. PEARCE.

Subscribed and sworn to before me this 15th day of March, 1871.

ALFRED ROUS, *Clerk.*

And thereupon plaintiff admits that if the witness, Robert Nelson, was here he would swear to the facts stated in said affidavit, and plaintiff withdraws his motion to suppress part of the deposition of T. F. Eckerts and Oliver Palmer, taken at Cincinnati, and thereupon the court overrules said motion for a continuance, and defendants except and
115 file bill of exceptions for refusing a continuance to obtain the evidence of said R. M. Wade, and the plaintiff on same day, previous to last ruling on plaintiff's motion, struck from the file the deposition of said Wade, taken by the defendants in this cause, at Cincinnati, Ohio, on the 13th day of March, 1871, to which defendants except and file a bill of exceptions, as follows, to wit:

Bill of exceptions.

Switzerland common pleas court.

CHARLES ALLING, ADMR., &C., *vs.* THOMAS SHERLOCK ET AL. } March term, 1871.

Be it remembered that on the 3rd day of said term of said court the defendants moved the court for a continuance of said cause until

the next term of this court, and file' the following affidavit in support thereof:

In Switzerland com. plea court, March term, 1871.

STATE OF INDIANA,
Switzerland County:

CHARLES ALLING, ADMR. OF OTIS B. SAPPINGTON, dec'd,
vs.
THOMAS SHERLOCK ET AL. } Civil action.

116 CHRISTOPHER G. PEARCE, one of said defendants, being first duly sworn, and on his oath, says that Robert Nelson is a competent and disinterested and material witness for the defendants in the trial of the above-entitled action, without whose testimony defendants cannot safely go to trial in the above cause.

That said witness will testify that he was a professional river-pilot; that he was a passenger on the steamer United States on the night of the 4th day of December, 1868, at the time of the collision, and that the collision occurred in the Ohio River, within the boundary of Kentucky, and that said steamer United States at the time of the collision was not at or near the Indiana shore until she was run towards the same after the collision for the purpose of trying to save the passengers on board said steamer.

That said witness left the city of Cincinnati, Ohio, where he then resided, about one year after the accident and before this suit was commenced, since which time defendants did not and could not ascer-
117 tain where said witness was or where he resided, although they made diligent inquiry and search for him by writing and making personal inquiry for him, till about ten days ago they learned, for the first time, that said witness resided in or near Oil City, in the State of Pennsylvania, but did not then learn his location with sufficient certainty to direct their attys., at Madison, where to give a notice to take his deposition; that the facts that the defendants expect to prove by said witness, as above stated, this affiant believes to be true, and he knows no other witness by whom defendants can prove the same facts so fully, whose testimony defendants can as readily procure; that defendants can procure the deposition of said witness, to be used on the trial of this cause, by the next term of this court.

Affiant further says that the absence of said witness has not been procured by the act or connivance of the defendants, nor by others at their instance or request, nor with their knowledge or consent.

Affiant further swears that Richard M. Wade is a competent, dis-
118 interested, and material witness for the defendants, on the trial of the above-entitled action, without whose testimony they cannot safely go to trial; that it is in evidence by deposition on file, which defendants believe will be used by plaintiff in this cause, of one Lee Burton, who testified that just after the collision between the steamers United States and America she saw said Richard M. Wade (who was then and there captain, and in command of said steamer United States) come out of room No. 33, in the ladies' cabin, which room was, at that time, occupied by one Mrs. Pearce, of Louisville, Kentucky.

Affiant further says that defendants can prove by said witness Wade

that he was not in Mrs. Pearce's room that night, and that he was not in room number 33 in the ladies' cabin of the steamer United States that night, but that he was on watch all night up to the time of the collision, and that about fifteen minutes before the collision he had gone into the cabin of said boat to suppress a noise that was being made there,
119 and that at the time of the collision he was on the hurricane-roof of the boat aforesaid, on watch; that after the collision, in the efforts of the officers to get the steamer United States and passengers ashore, the boat got some sixty or seventy yards nearer the Indiana shore, than they were at the time of the collision; that at the place where the steamer United States sunk the river was navigable for the boats of the largest class navigating the Ohio River; that there was room for a boat of their size to run between the United States and the Indiana shore; that boats do sometimes run in there, and that the place where the steamer United States sunk was south of low-water mark, on the northern or Indiana side of the Ohio River.

Affiant further says that deposition of said witness Ann Lee Burton was taken on the 12th day of December, 1870, and since the first deposition of said R. M. Wade on file in this cause was taken, said facts that defendants expect to prove by said witness, affiant believes to be true, and he knows of no other witness by whom defendants can prove
120 the same facts, and whose testimony can be as readily procured; that said witness resides in Covington, Kentucky, but that he is commander of the steamer Robert Mitchell, and not in the employment or service of the defendants; that the steamer Robert Mitchell runs from Cincinnati, Ohio, to New Orleans, in the State of Louisiana; and that on the December term, 1870, of the Jefferson common pleas, and just before the venue in this case was changed to this county, there was an order made by said court that defendants might retake the deposition of said Wade, as to points not before testified upon by him, the matter testified to by said Burton not being known by affiant or defendants at the time of taking the deposition of said Wade, which was taken before said Burton's deposition was taken; that ever since the adjournment of said Jefferson County common pleas court, on the day of January, 1871, defendants have used all the di'igence they were masters of to find a time and place where said witness would stop long enough that they might
121 give notice and take his deposition, but that they have been unable to do so til' the 13th of this month, and that the same has been suppressed by the court, because no sufficient notice was given of the taking of the same.

Affiant refers to said deposition of said Wade last taken, and makes it part of this affidavit, to show the materiality of his evidence, and the impossibility of taking the same before.

He says that said Wade left home about the middle of January, 1871, and has not been home since until last Saturday evening.

Affiant further says that defendants have used all reasona'l' exertion to procure the personal attendance of said witness on the trial of this cause, at this term of this court, but that they have been unable to do so.

Affiant says that, if this cause is continued until the next term of this court, defendants can either procure the personal attendance of said witness, or his deposition to be used at the trial of this cause at the next term of this court.

Affiant further says that the absence of said witness has not
122 been procured by the act or connivance of the defendants, nor by others at their instance or request, nor with their knowledge

or consent, and that this application is made for justice only. All of which he verily believes.

C. G. PEARCE.

Said Pearce further says that since preparing and signing the foregoing affidavit the court has announced a ruling and decision, suppressing parts of the deposition of Oliver Palmer, of Covington, Kentucky, and Thomas F. Eckert, of Cincinnati, Ohio, striking out and suppressing all that is material of the examination-in-chief of Palmer, and the most material parts to defendants of Eckert's deposition. He says that said persons are skilled in the business of boating, and able to give opinions, as skilled witnesses, as he believes, from an examination of the breaks of the sunken steamer, from collision with another boat, of the position of the ascending and descending boats, and pretty accurately of the degree of angle of the respective boats and how
123 they came together; that those witnesses are the only persons of skill of whom he is aware who made an examination of said steamer United States; that their depositions were taken in good faith by competent counsel, and said point is, as he is advised, a most material one in defense of this case; that defendants are taken by surprise by the suppression of said depositions, and ask in justice that the case be continued, to retake said depositions. Such witnesses are resident men, as stated in their depositions, and their evidence can be had by the next term of this court.

C. G. PEARCE.

Subscribed and sworn to before me this 15th day of March, 1871.
ALFRED ROUS, *Clerk.*

For deposition of Richard M. Wade, referred to him, see p line to page line . (This inserted by agreement of atty.) C. E. Walker, for deft., C. A. Corbly, for pla'iff *of* Alling.)

124 And the court being of the opinion that said affidavit was sufficient to entitle the defendants to a continuance of this cause for the evidence of said Nelson and said Eckert and said Palmer, the plaintiff agreed to admit that said Nelson would swear, if present, to the facts stated in the affidavit, and agreed to withdraw the motion to suppress the depositions taken by defendants, and which he had made at this term *at* in this case.

And the court also being of the opinion that the mattters stated in said affidavit, in respect to obtaining the evidence of R. M. Wade, are not sufficient to entitle defendants to a continuance, overruled said motion. To which ruling of the court, in refusing a continuance to obtain the evidence of said Wade, defendants excepted, and do except & file this bill of exceptions, which they pray may be signed and sealed by the court and made a part of the record in this case.

SCOTT CARTER, *Judge.*

125 *Issue and jury.*

And this cause being at issue and a jury demanded, comes the following jury, viz: Greensbury Searers, Stephen R. Tinker, Joseph M. Pearce, Martin Madary, Stephen Ross, Francis Prickett, Charles Webb, Dennis Valentine, Alfred Shaw, Lewis F. Hatch, Jacob Cole, and John F. Doan, twelve good and lawful men, householders of said county, who, being

duly elected, tried, and sworn to well and truly try the issue joined herein, but having heard a portion of the evidence and not having time to hear the remainder to-day, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 4th judic'al day of said term of said court, being the 15th day of March, 1871, the following further proceedings were had in the said cause, viz:

Parties come, and the jury heretofore impan*n*elled and sworn in this cause also comes, and hearing a further portion of the evidence, and not having sufficient time to hear the remainder to-day, said jurors
126 are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 5th judic'al of said term of said court, being the 17th day of March, 1871, the following further proceedings were had in said cause, viz:

Parties come, and the jury heretofore impan*n*elled and sworn in this cause also comes, and having heard a further portion of the evidence, and not having sufficient time to hear the remainder to-day, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 6th judic'al day of said term of said court, being the 18th day of March, 1871, the following further proceedings were had in said cause, viz:

Come the parties, and the jury heretofore impan*n*eled and sworn
127 in this cause also comes, and having heard a further portion of the evidence, and not having sufficient time to hear the remainder to-day, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock Tuesday morning.

And afterwards, to wit, on the 8th judicial day of said term of said court, that being the 21st day of March, 1871, the following further proceedings were had in said cause, viz:

Parties come, and the jury heretofore impan*n*eled and sworn in this cause also comes, and having heard a further portion of the evidence, and not having time to hear the remainder to-day, said jurors are permitted to separate under the usual charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 9th judicial day of said term of said court, being the 22nd day of March, 1871, the following further proceedings were had in said cause, viz:

128 Come the parties, and the jury heretofore impan*n*eled and sworn in the cause also come, and having heard a further portion of the evidence, and not having time to hear the remainder to-day, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 10th judicial day of said court, being the 23d of March, 1871, the following further proceedings were had in said cause, viz:

Parties come, and the jury heretofore impan*n*eled and sworn in this cause also come, and having heard the remainder of the evidence, and a portion of the argument of counsel, and not having sufficient time to

hear the remainder, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 11th judicial day of said term
129 of said court, that being the 24th day of March, 1871, parties come, and the jury heretofore impanneled and sworn in this cause also come, and having heard a further portion of the argument of counsel, and not having sufficient time to hear the remainder to-day, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 13th judicial day of said term of said court, being the 25th day of March, 1871, the following further proceedings were had in said cause, viz:

Verdict.

Parties come, and the jury heretofore impanneled and sworn in this this cause also comes, and having heard the remainder of the argument of counsel, and the charge of the court, said jurors retire under charge of a sworn officer for deliveration, and afterwards return into open court the following verdict, to wit:

We, the jury, find for the plaintiff, and assess his damages at the sum of five thousand dollars, ($5,000.00.)

ALFRED SHAW, *Foreman.*

130 And in answer to interrogatories propounded to them, the jury return the following answers, viz:

CHARLES ALLING, ADMR. of OTIS B. SAPPINGTON, deceased,
vs.
THOMAS SHERLOCK AND OTHERS.

The jury are directed to answer the following interrogatories in case they return a general verdict:

First. Did the steamboats United States and America collide above or below low-water mark on the Indiana side of the Ohio River?

Answer. Above low-water mark.

2. Did the said United States sink and burn up above low-water mark on the Indiana side of the Ohio River?

Answer. She did.

3. If the collision took place at or below low-water mark on
131 the Indiana side of the channel of said river, did the force of the collision and momentum of the boats coming in contact send and cause the United States to move above low-water mark on the Indiana side of the channel?

Ans. Yes.

4th. Did Otis B. Sappington, deceased, perish and die on said steamer above low-water mark on the Indiana side of the Ohio River by reason of said collision and burning of said boat?

Ans. Yes.

5th. Did the collision between the steamboats United States and America occur on the Ohio River at a point in the river opposite the place where she lay sunk, or at a point in the river further up stream?

Ans. At a point near where the United States sunk.

duly elected, tried, and sworn to well and truly try the issue joined herein, but having heard a portion of the evidence and not having time to hear the remainder to-day, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 4th judic'al day of said term of said court, being the 15th day of March, 1871, the following further proceedings were had in the said cause, viz:

Parties come, and the jury heretofore impan*n*elled and sworn in this cause also comes, and hearing a further portion of the evidence, and not having sufficient time to hear the remainder to-day, said jurors
126 are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 5th judic'al of said term of said court, being the 17th day of March, 1871, the following further proceedings were had in said cause, viz:

Parties come, and the jury heretofore impan*n*elled and sworn in this cause also comes, and having heard a further portion of the evidence, and not having sufficient time to hear the remainder to-day, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 6th judic'al day of said term of said court, being the 18th day of March, 1871, the following further proceedings were had in said cause, viz:

Come the parties, and the jury heretofore impan*n*eled and sworn
127 in this cause also comes, and having heard a further portion of the evidence, and not having sufficient time to hear the remainder to-day, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock Tuesday morning.

And afterwards, to wit, on the 8th judicial day of said term of said court, that being the 21st day of March, 1871, the following further proceedings were had in said cause, viz:

Parties come, and the jury heretofore impan*n*eled and sworn in this cause also comes, and having heard a further portion of the evidence, and not having time to hear the remainder to-day, said jurors are permitted to separate under the usual charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 9th judicial day of said term of said court, being the 22nd day of March, 1871, the following further proceedings were had in said cause, viz:

128 Come the parties, and the jury heretofore impan*n*eled and sworn in the cause also come, and having heard a further portion of the evidence, and not having time to hear the remainder to-day, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 10th judicial day of said court, being the 23d of March, 1871, the following further proceedings were had in said cause, viz:

Parties come, and the jury heretofore impan*n*eled and sworn in this cause also come, and having heard the remainder of the evidence, and a portion of the argument of counsel, and not having sufficient time to

hear the remainder, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 11th judicial day of said term
129 of said court, that being the 24th day of March, 1871, parties come, and the jury heretofore impanneled and sworn in this cause also come, and having heard a further portion of the argument of counsel, and not having sufficient time to hear the remainder to-day, said jurors are permitted to separate under an appropriate charge of the court until 8½ o'clock to-morrow morning.

And afterwards, to wit, on the 13th judicial day of said term of said court, being the 25th day of March, 1871, the following further proceedings were had in said cause, viz:

Verdict.

Parties come, and the jury heretofore impanneled and sworn in this this cause also comes, and having heard the remainder of the argument of counsel, and the charge of the court, said jurors retire under charge of a sworn officer for deliveration, and afterwards return into open court the following verdict, to wit:

We, the jury, find for the plaintiff, and assess his damages at the sum of five thousand dollars, ($5,000.00.)

ALFRED SHAW, *Foreman.*

130 And in answer to interrogatories propounded to them, the jury return the following answers, viz:

CHARLES ALLING, ADMR. of OTIS B. SAPPINGTON, deceased,
vs.
THOMAS SHERLOCK AND OTHERS.

The jury are directed to answer the following interrogatories in case they return a general verdict:

First. Did the steamboats United States and America collide above or below low-water mark on the Indiana side of the Ohio River?

Answer. Above low-water mark.

2. Did the said United States sink and burn up above low-water mark on the Indiana side of the Ohio River?

Answer. She did.

3. If the collision took place at or below low-water mark on
131 the Indiana side of the channel of said river, did the force of the collision and momentum of the boats coming in contact send and cause the United States to move above low-water mark on the Indiana side of the channel?

Ans. Yes.

4th. Did Otis B. Sappington, deceased, perish and die on said steamer above low-water mark on the Indiana side of the Ohio River by reason of said collision and burning of said boat?

Ans. Yes.

5th. Did the collision between the steamboats United States and America occur on the Ohio River at a point in the river opposite the place where she lay sunk, or at a point in the river further up stream?

Ans. At a point near where the United States sunk.

132 6th. If the collision was at a point in the river further up stream than where she lay sunk, how much further was it up the river? Answer. Very near the point where the United States sunk.

ALFRED SHAW, *Foreman.*

Motion for new trial.

Thereupon the defendants move the court for a new trial herein, and file their reasons therefor as follows, to wit:

Switzerland common pleas, March term, 1871.

CHARLES ALLING, ADMR., &C., }
vs. }
THOMAS SHERLOCK ET AL. }

The defendants move the court to grant them a new trial herein, and assign as reasons therefor—

1st. The court erred in overruling defendants' demurrer to plaintiff's complaint.

2nd. The court erred in suppressing the depositions of C. G. Pearce, defendant.

133 3rd. The court erred in overruling defendants' demurrer to the plaintiff's 1 & 2 paragraph of reply.

4th. The court erred in sustaining plaintiff's demurrer to 1, 2, 3, 4, 5, 6, & 7 paragraphs of answer.

5th. The court erred in striking out part of defendants' 3rd paragraph of answer, and sustaining a demurrer to the residue.

6th. The court erred in striking out the 1, 4, 5, 6, & 7 paragraphs of defendants' answer.

7th. The court erred in excluding evidence offered by defendants and excepted to, and the court erred in admitting evidence offered by plaintiff and objected to by defendant, to which they excepted.

8th. The court erred in the instructions given by the court to the jury.

9th. The court erred in giving to the jury the charge asked by plaintiff.

10th. The court erred in refusing to give to the jury charges asked by defendants, to all of which ruling the defendants excepted.

10½. The court erred in refusing to let C. G. Pearce testify when
134 offered by defendants.

11th. The verdict is not sustained by the evidence—is contrary to the evidence.

12th. The verdict is contrary to law, & law and evidence.

13th. The damages are excessive.

LINCOLN, WALKER & ALLISON,
For Defts.

Which motion being submitted to the court, is overruled; to the overruling of which motion for a new trial the defendants except, and (60) sixty days' time is given them to file their general bill of exceptions.

Judgment.

It is therefore considered by the court that the plaintiff recover of said defendants the aforesaid sum of five thousand dollars, ($5,000.00,)

together with dollars and cents, his costs and charges herein laid out and expended.

To the overruling of which motion for a new trial herein, and rendering judgment upon the verdict of the jury, the defendants
135 except, and pray an appeal to the supreme court of the State of Indiana, which is granted upon the defendants filing their appeal-bond in the sum of seven thousand dollars, with Robert A. Knox and Ulysses P. Schenck as their security, within thirty days from the rising of the court.

And, afterwards, to wit, on the 4th day of April, 1871, the defendants filed their appeal-bond in the clerk's office of said court; which reads as follows, to wit:

Appeal-bond.

Know all men by these presents that we, Thomas Sherlock, Christopher G. Pearce, Robert A. Knox, and Ulysses P. Schenck are held and firmly bound to Charles Alling, administrator of Otis B. Sappington, dec'd, in the penal sum of seven thousand dollars; for the payment of which, well and truly to be made and done, we bind ourselves, our heirs, and personal representatives, jointly and severally, firmly by these presents.

The above obligation is on condition that, whereas Thomas
136 Sherlock, Christopher G. Pearce, Frank Carter, Zachariah M. Shirley, Thomas Gaff, David S. Benedict, William C. Gibson, Patrick Rogers, Theodore Cook, James W. Gaff, William C. Hite, Jonathan H. Barker, Henry W. Smith, and John J. Backman have appealed from a decision of the Switzerland County court of common pleas in the State of Indiana, in an action wherein said Charles Alling, as such administrator, is plaintiff, and they, appellants, are defendants, and in which judgment was rendered at the March term of said court, 1871, for five thousand dollars & costs in favor of said Alling, and against them, to the supreme court of Indiana:

Now, if said appellants shall well and truly prosecute said appeal and pay to said Alling & his successors in office all such judgment and costs & damages as shall or may be affirmed or adjudged against them, appellants, by and in said supreme court, then this obligation to be null and void; otherwise to be in full force.

137 Witness our hands this 29th day of March, 1871.

THOMAS SHERLOCK.
C. G. PEARCE.
ROBERT A. KNOX.
ULYSSES SCHENCK.

And afterwards, to wit, on the 22nd day of May, 1871, the defendants filed their bill of exceptions in the clerk's office of said court; which reads as follows, to wit:

General bill of exceptions.

BILL OF EXCEPTIONS.

Switzerland common pleas court, March term, 1871.

CHARLES ALLING, ADMINISTRATOR OF OTIS B. SAPPINGTON, dec., *vs.* THOMAS SHERLOCK ET AL. } Bill of exceptions.

Be it remembered that on the trial of the above-entitled cause in said court, at said term, the plaintiff, to sustain the issues joined on this behalf, introduced the following evidence, to wit:

138 *Evidence of James Hargan.*

JAMES HARGIN, a witness for the plaintiff, being sworn, testified—

I live in Madison, Indiana; have been seven years in the wholesale & retail grocery business. Otis B. Sappington resided in Madison, Indiana. He had a wife and two children at the time of his death, and one other child has been born since. Sappington was about 35 years old; he was a partner of mine. The last child was born seven or eight months after his death.

Plaintiff's attorney here asked the witness—

What was the business capacity and ability of Otis B. Sappington?

To which question the defendants' atty. objected, as incompetent, but the court overruled the objection, and the defendants' atty. excepted to the ruling, and the witness answered—

He was a partner in the firm with me; was a good business-man; was accurate and careful, and strict in his business transactions. He had one-third interest in the profits of the firm. The capital of the firm
139 was, originally, $15,000.

(To which evidence the defendants' counsel objected, and the court admitted it, and the defendants counsel excepted at the time.)

JAMES HAGAN: Mr. Sappington was engaged in the wholesale grocery business with Meyer & McKee, from 1857 to 1861, at Madison, as clerk. Afterwards Meyer went out, and Sappington continued with McKee till I became a member of the firm in the fall of 1863, and then Sappington first became a member of the firm. He was only clerk at Meyer & McKee's. Then he remained a member of the firm, which was called Hargan, Sappington & Co., till his death.

I frequently bought goods of Mr. Sappington while he was a member of Meyer & McKee in retail business. During the time he was a member of the firm of Hargan, Sappington & Co., he was book-keeper, & had charge of the office. His health was very good, and he was able to attend to business all the time, except a very short time. His
140 habits of industry and attention to business were very good. He was there attending to business during business hours.

Plaintiff's counsel then asked the witness: How much has the capital of that firm been increased since the death of Sappington?

Witness answered: The capital was increased to something over $20,000. Sappington put in $2,500 and his time & services against the capital put in by the others.

The witness further said that Sappington, ⅓ interest averaged $4,000

per annum income, and the defendants' counsel objected; the objection was overruled, and defendants, by counsel, excepted.

"His family came to the store frequently, some of them nearly every day. He was uniformly kind to them, the same way at his home while I was there.

His children were Charles, aged 11; Mary, aged 6, and the youngest, born in August, 1869, named Otis B., all living.

On cross-examination the witness said that McKee & Meyer were
141 Sappington's partners at one time; that after his death his interest in the firm was valued at $3,000, or something over—he put in no more money than the $2,500 when the capital was increased. Sappington's share of the profits was about $4,000 per year, from 1863 to 1868. He was a thin, spare man. If he was under the care of a physician, I did not know it. We carried on a wholesale & retail grocery about 3 years, and wholesale alone about 2 years before his death.

(Defts.' counsel asked the witness, and offered to prove, in mitigation of damages, that Mrs. Sappington had collected $3,000 life-insurance on a policy upon his life; but the court refused to admit the evidence; to which ruling the defendants' counsel excepted at the time.)

The capital of our firm was increased after Sappinton's death to $35,000, and the profits were about the same as before his death.

On re-examination, the witness said that since Sappington's
142 death the firm had employed another person as book-keeper. It required an additional person to carry on the business since his death.

DANIEL E. DOUGHERTY was next sworn for plaintiff; and that he resided in Madison, and was employed in the wholesale grocery & liquor business years, and knew Sappington well. He was about 37 years old.

In answer to plaintiff's attorney's question as to Sappington's business qualifications, (to which evidence defendants' counsel excepted, and the evidence was received and excepted to by the defendants' counsel at the time,) the witness testified, subject to said exception—

I regarded Sappington as a good and industrious business man. I am a book-keeper, and regarded him as a first-class accountant. I had business transactions with him at different times. I regarded him as a good buyer and seller, and a very attentive man to business. He was book-keeper for Meyer & McKee from 1861 to time he commenced
143 business for himself. He acted temporarily for the Madison Insurance Company's Bank as cashier.

Witness further said that, as an employee, he thought Sappington's services, if used to his full capacity, were worth $2,000 per annum as a book-keeper. In such a place as Madison he thought his services worth $1,500 p'r year.

The witness further said: I was one of the appraisers of his estate that was made for the purpose of disposing of his interest in the firm. My recollection is that we appraised his interest at $3,600. We endeavored to appra'se it at its cash value.

Plaintiff's counsel asked the witness, What was the probable annual value of Sappington's interest in the firm? to which, and the answer thereto, defendants' counsel objected; but the court admitted the evidence, and the defendants' counsel excepted at the time, as incompetent and irrelevant, to the ruling and to the evidence; and the witness said:

In my judgment, his income was worth $4,000 a year.

Evidence of Wm. Inskip.

Plaintiff's counsel then called as a witness WILLIAM INSSKIP,
144 who testified that he resided in Madison, Indiana, and had a lumber-yard; that he knew Sappington 15 years; that he had good health and a strong constitution; knew his habits by reputation; that he had visited Sappington's family, and had observed that he was kind to his family.

Witness further testified that he was on board the steamboat United States at the time of the collision with the America; and that Sappington was a passenger on the same boat. The last time I saw him was at supper, about 6 o'clock that night.

I retired that night about half past ten o'clock. The jar and collision woke me up. I was in a doze. I judge there were a hundred passengers on the boat. At the shock I jumped up and opened the door. I saw a very strong light at the front part of the boat, a big fire. Our stateroom was about midway of the ladies' cabin. On seeing the fire, I immediately put on my pants and coat, not my boots. Didn't
145 wait for my wife to put on her clothes. She left with me in her night-clothes. We went to the back end of the boat. Went out on the guard to the Indiana shore from our door. I went through the cabin about 50 feet, before we went out on the guard, in from three to five minutes. The boat had turned bow up stream when I got on the guard. I was on the guard next the Indiana shore. We walked forward on that guard as far as the wheel-house, and stopped aft of it. We jumped from the guard of the United States to the forecastle of the America, on the lower deck. The bow of the America was up stream. We crossed the bow of the America, and I and my wife jumped into the river. We had on life-preservers. I can't say whether our feet touched the bottom. The water was quite deep to me. We jumped four or five feet before we touched the water, and five to ten feet before we touched the bottom. My head went under the water when I jumped.
146 Don't recollect whether I struck standing or not. It was from 20 to 30 feet from the guard to the shore. The whole country was lighted up before I got on shore. I didn't see any burning fire on the surface of the water. We went to Ray's house. Think that was a quarter of a mile from the boat.

On cross-examination, the witness said:

I visited Sappington's house very seldom.

I had retired at half past ten o'clock. Was in a doze, and jumped up at once. I don't know Mr. Riley, the clerk of the boat. I looked out and saw the fire in front; then put on my clothes and the life-preserver. Every step I went back it got hotter & hotter. Can't say how far the fire had gone, nor w'ether the wheels were moving when I stood by the wheel-house on the guard. I was excited.

After I put on coat and life-preserver, I went into the cabin, stopped a moment, & the heat increased every step I made back. I saw a
147 young lady screaming for her mother. I didn't see any person I knew. I knew Vance, Bright, and Sappington, all of them. I did not see any of them. I did not see Sappington, or any person I knew. I went to the stern, then forward to the wheel-house, and stopped there and jumped out on the America. I was under the impression that the bow of the America was swinging towards us, and think the bow of the United States was swinging towards the shore. Think the stern of the America was on fire, but am not positive. There were not many per-

sons on shore when I got there. Some persons were standing there who had gone off the America.

If the heat kept on increasing, it would soon suffocate persons in the cabin. In a minute, probably, the whole of the gentlemen's cabin was lighted up. There was a strong light. I didn't see any lady forward when I looked out the second time.

On examination, the witness said he didn't look to see in the cabin, to see any person particularly; heard screaming all over it. I
148 know the noise made by the revolution of the wheels of the boat. If the wheels, from where I stood, had moved from 8 to 11 revolutions, I think I would have heard them. I might not have heard them.

I don't remember which way the wind blew, and I don't remember whether I could look out of the stern of the ladies' cabin.

On recross-examination, the witness said he stood from 5 to 10 minutes near the wheel-house, and when he first went to the wheel-house the two boats were from 30 to 50 feet apart.

And again, in answer to questions of the plaintiff's counsel, the witness said that the bow of the America was out from shore, *and* when he first went out, and that he didn't know w'ether the bow or stern of the United States was nearest the shore when he first went out.

Patric Wade.

And the plaintiff called another witness named PATRIC WADE, who said:

149 I live in Madison, Indiana, and remember the accident of the 4th Dec. between the United States and the America. I went up the Monday morning after that. I went to look after Sappington's remains. A body had been found among others, supposed to be Sappington. We took it down to Madison and left it at Vials', an undertaker. The body appeared to be badly burned; part of both legs were missing, and the head was badly burned. I don't know whether there is anybody at court here who went up with me. I don't whether McIntire went up or not. I didn't see the wreck of the United States at that time; it was under water. I was at the funeral, and Mrs. Sappington was there.

Thomas McIntire.—Evidence.

THOMAS MCINTYRE was sworn as a witness for the plaintiff, and said he lived in Madison, Indiana, and heard of the collision and went up Sunday night on the steamboat S. B. Graham. There were two or three bodies taken down, but I didn't know where they were taken.
150 Think I saw Pat Wade there. I recollect a body said to be Sappington's body. It was burned considerably. I could not recognize it myself. Can't recollect what parts were burnt most.

The plaintiff's counsel then read in evidence the deposition of Thomas J. Cogley and William A. Collins, taken at Madison, Indiana, March 2, 1871, which reads as follows:

Deposition of Dr. William A. Collins, and Dr. Thomas J. Cogley, witnesses produced and sworn to before me, a notary public at Madison in Jefferson County, State of Indiana, on the 2nd day of March, 1871, pursuant to the enclosed notice.

These depositions were taken on the part of the plaintiff in a certain action now pending in the common pleas court of Switzerland County,

in the State of Indiana, wherein Charles Alling, administrator of the estate of Otis B. Sappington, is plaintiff, and Thomas Sherlock,
151 Moses Andrew, Christopher G. Pearce, D. C. Benedict, Frank Carter, Zachariah M. Shirley, and others, are defendants.

Thomas J. Cogley's evidence.

The said THOMAS J. COGLEY being duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows:

Question 1st. State your name, age, residence, and your occupation; and how long have you been engaged in said occupation.

Answer. Thomas J. Cogley is my name; am 50 years of age, about; Madison, Jefferson County, Indiana, my residence; am a physician and surgeon; am actively practicing; have been practicing twenty-five years.

Question 2. State whether you were acquainted with Otis B. Sappington, deceased, late of Madison, Indiana; if you were, state how long, and if you ever were his family physician.

152 Answer. I was acquainted with Otis B. Sappington for more than 15 years—since he came here. I was his family physician all the time since I knew him.

Question 3. State whether you remember of the collision and burning of the steamboats United States and America on the night of December 4th, 1868, near Warsaw, Kentucky?

Answer 3. Yes, sir; I remember hearing about it at the time.

Ques. 4. State whether a short time after the collision and burning of said boats you were called upon to examine and identify a corpse supposed to be Otis B. Sappington's; if you were, when and where it was, what examination you made, and whether you were able to identify the said corpse, and how.

Answ'r 4. I was called upon a day or two after the accident
153 to go to the undertaker's, Mrs. Vials' rooms, where the corpse was. The head and face were burnt away, so that I could hardly have known the body from the face. I recognized it from some deep scars on the lower part of his back, which was caused by some carbuncular boils, which occur'ed some two years before his death. In connection with that, the region of the lower part of the back was covered by an unusual quantity of red hair, which I often noticed in dressing the said boils. I recognized the body as that of Otis B. Sappington, beyond any doubt.

Question 5. State whether you are able to form any judgment from the examination of the corpse as to how Mr. Sappington came to his death.

Answer 5. There is no doubt but that he was burnt to death, probably smothered, and then burnt.

Question 6. State if the Sappington you are speaking about is the same Otis B. Sappington for whose death this suit was brought.

154 Answer. Yes, sir.

Question 7. State whether you attended the said Sappington as physician at the time he had those carbuncular boils you spoke about.

Answer. I did.

Cross-examination:

1 X-question. What examination, if any, did you make of the said body to enable you to form a judgment as to how Mr. Sappington came to his death?

Answer. I just come to the conclusion that he came to his death by being burnt to death, by his charred appearance; one of his legs was burnt off, the upper part of his head was burnt away, leaving his brain exposed.

T. J. COGLEY.

155 *Evidence of Wm. A. Collins.*

William A. Collins' deposition.

The said WILLIAM A. COLLINS being duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows:

Question 1st. State your name, age, residence, and occupation, and how long you have been engaged in said occupation.

Answer 1. William A. Collins; age, 29; practicing physician and surgeon; have been practicing 9 years; reside in Madison, Indiana.

Ques. 2. State if you were acquainted with Otis B. Sappington, deceased, in his life-time; if you were, how long, and if you ever attended him as a physician.

Ans. I was acquainted with him from 1865 to 1868, the time of his death. I attended him as physician in 1867. It was for some large ab'cesses about the buttocks.

156 Question 3. State whether you remember the collision of and burning of the steamers United States and America on the night of the 4th of December, 1868.

Answer. Yes, sir.

Question 4. State whether you were called upon, shortly after said collision, to identify a corpse said to be that of Otis B. Sappington; if you were, state when, where, what examination you made, and whether or not you identified said corpse, and how.

Ans. 4. Yes, sir; I was called upon to identify a body, a few days after said collision, at Mr. Vial's undertaking-room, at Madison, Indiana. I examined the body in connection with Dr. Runkler and Dr. Cogley, and identified it to be that of Otis B. Sappington by reason of scars about the buttocks, which scars were caused by the ab'cesses before-mentioned, and also by the peculiar gro'th of the hair. I had

157 not the least doubt about that being Mr. Sappington's body.

Question 5. State whether you formed any judgment as to how Mr. Sappington came to his death.

Answer. I did; by burning.

WM. A. COLLINS, *M. D.*

STATE OF INDIANA,
County of Jefferson, ss:

I, Jerome F. Mullen, a notary public within and for said county, certify that the above Dr. Thomas J. Cogley and Dr. William A. Collins were by me first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth relating to said cause: that their depositions were reduced to writing by me; that the adverse party, defendants, appeared by their attorney, C. E. Walker, who appeared during the examination of the 1st witness, Thos. J. Cogley, but did not attend during the examination of William A. Collins,

158 the second witness. Said depositions were taken at the law office of John Roberts, in Madison, county of Jefferson, State of Indiana, on the 2nd day of March, 1871, between the hours of 8 o'clock a. m. and

5 o'clock p. m. of said day, agreeable, in all respects, to the hereunto annexed notice.

In testimony whereof I have hereunto set my hand and notorial seal this 2nd day of March, 1871.

[L. S.] JEROME F. MULLEN, *N. P. J. C.*

Evidence of Wm. A. Watts.

And the plaintiff introduced as a witness WILLIAM A. WATTS, who testified that he had been engaged in navigating the Ohio River, as captain of a steamboat, for 21 years past, off and on; that he had been a captain on one of the boats of the People's Line, between Louisville & Cincinnati, and 'new the steamboat' United States and America, and had been past the place of collision frequently since it happened,
159 and had seen the wreck of the America. Rayl's house was near by there. I remember that there was a good stage of water there at time of collision. I was at the river, at Madison, the morning after the accident. I think there was 15 feet in the shoalest part of the river at that time.

And the plaintiff's attorney then asked the question:

How many boats of the size and capacity of the steamboats United States and America could have passed at that part of the river if navigated with ordinary care and prudence?

To which question and the answer thereto the defendants' counsel objected, and the court overruled the objection and permitted the witness to answer subject to the objection & exception, and the defendants' counsel excepted at the time on the ground that the matter was immaterial, incompetent, and irrelevant.

And the court overruled the exception of the defendants' counsel, and permitted the witness to answer the question, and he said:
160 The river was about a half a mile wide. I don't know how many boats could pass. To which the defendants excepted at the time, and the court admitted the evidence, and the exception of the defendant' is recorded.

And the witness further said that he thought the boats drew 3½ to four feet light; 200 tons would not load her very deep; there is a good long stretch of straight river, 2 miles above Royl's house; you can see below Royl's house, below Warsaw bar, probably 2 miles.

And the witness further said that, under the regulations and rules, the up-stream boat signals first and the down-stream boat has the channel. When the up-stream boat signals once, that is for the starboard, and two whistles from either boat is for the larboard. The time between the signals on the same boat is no time at all hardly. Sometimes there is water in the whistle and that makes a sort of whizzing noise out of the first blast, and that would not be heard in the second signal.
161 If the up-stream gave one signal, and there was no answer, she would give another. If the boats were within 800 yards of each other, the pilot ought to stop his boat. If they get so close together that he thought there was danger of a collision, he ought to stop; this would apply to both boats. If the boats are six hundred yards apart, it is their duty to stop, or run very slow, if the signals are not answered right when within 600 y'ds of each other. I suppose that if the up-stream boat at that place gave one signal and the down-stream gave one, there was no danger of a collision, but if two boats see each other's signal-lights one and a half mile off, and if one gives one signal and the other two, if there is no change made it would bring them close together

Such a boat as the United States running down at 15 miles an hour, and there was a signal to back, it would take her some time to check her headway and back if there was a strong current. In that case the boat might run, before being fully checked, 200 yards. The Amer-
162 ica going up wouldn't go so far; she might check to a stand-still in less than, say, one hundred yards. If they hadn't commence' backing at 300 yards apart, I think the America would not have cut into the United States fifteen or twenty feet, but I never saw the "cut" in the United States. I had one case where the boats came in collision and cut each other near the bow. If boats come together at 6° nearly, head on, they are very apt to cut each other' guards and break some timbers. If they were very bluff it might cut into the hull; the United States was sharp. My idea is, that they might strip the guards. If they cut diagonally across 15 or 20 feet into the hull, then I think the boats would have come together quartering.

If the larboard side of the United States was cut and she was going straight down the river, the other boat must have quartered towards her. The States might heading towards either shore.

The shore there was of gravel and sand at the place of collis-
163 ion. There was only steep bank. I never noticed any other bank after leaving the steep bank. In a low stage *stage* of water it is more than 50 yards from the main bank to the water. Suppose the stage of water 15 feet, as at that time, and if the U. S. sunk 50 y'ds from the water edge, I think where she lay would get dry. I don't think in 1869 there was less than 3½ feet water in the channel. I have known it to be 30 inches between Madison & Cincinnati; that is about as low as I ever found it; have seen it less than 2 feet on the flats. If there were 22 inches on the grassy flats I think it would be dry 75 yards from where the water's edge was at place of collision at the stage of the water in the river at that time. There is a bar out there in the river, below Royl's house. There is a crossing of 17 inches on the grassy flats. I could not say whether it would be dry 100 yards out from the bank. If a boat was in the channel at or below Royl's as short distance when there were from 17 to 22 inches of water on the grassy flats, the point where
164 the boat was would be 200 y'ds from where the water's edge would be at a stage of water like that at Dec. 4, 1868.

The channel there about Royl's is pretty close to the bank. It is about 75 yards from the shore. There is a bar out there in the river. Below Royl's house there is a crossing. The best water is always close to that shore by Royl's house, 75 yards from the water's edge when the water is low. I don't know how far out from shore a boat would be if running in the low-water channel. It is not a flat shore or bank there. At a fifteen-feet stage of water it would be 200 yards there from the shore to the center of the channel; at 17 to 22 inches on the grassy flats. I can't say how wide the channel is at Royl's. I don't know how wide it is; neve' said it sounded. The channel might be 75 yards from the shore at that place.

If the United States was struck on the larboard side quartering, the tendency would be to turn her head some to the Indiana shore,
165 and her stern out into the river. The stern would float round down stream. If she was cut quartering, the water would rush in fast.

(The county map being shown to the witness, he said it was a tolerably good representation of the river at that place.)

The America lay above the mouth of Bryant's Creek, at the head of the timber.

If the down-stream boat did not get a signal in time from the other boat, she would be very apt to signal first herself. A signal when they are a mile apart is in sufficient time.

Suppose the U. S. signaled first at one mile off before hearing a signal from the America at that place and stage of water. I would say it was not proper or prudent.

On cross-examination the witness said:

I commanded a boat 21 years ago—the John Torrance—9 months. I quit the river 8 or 10 years ago; have steambo'ted in the Madison & Cincinnati trade, & Louisville and Nashville trade. I don't
166 know how much time; was nearly a year in the People's Line. Some of the mail co. defendants are clever fellows; some I don't think so much of.

The river at Royl's house is half a mile wide. Several boats could pass. There is nothing in a dark night to prevent boats from running. There may be deception as to the distance lights are off in the night-time. Sometimes they appear near when far off, and far off when near. What I mean by saying that several boats could pass there is, that there was room in the river.

A short distance below Royl's house the up-stream boat cross' over from the Kentucky to the Indiana side, and the down-stream boat also goes over to the Indiana side. The wreck of the America lies just below where this crossing is made, and above the bar.

To stop the engines of the United States would require ½
167 minute. She could stop and back the engines in a minute. Her headway could not be checked entirely in less than 200 to 300 yards after starting to back the wheels, if running from 14 to 16 miles an hour.

I never saw the United States after the collision. Backing with the bow down stream on the starboard side would throw the boat towards the Indiana shore; backing on the starboard wheel when the bow was up stream would throw the boat towards the Kentucky shore, with 17 to 22 inches on the grassy flats. I think the channel, at place of collision, is 75 yards wide; boats there would run about 75 or 100 yards from shore. The shore there is pretty steep, one foot or rise extends 6 or 8 feet up the shore at that place. I never was on the bank at that place; have passed there; from the center of the low-water channel to the water edge is 75 to 100 yards; to the bluff-bank 175 to 200 yards.

I never piloted any; am no pilot; never was licensed. If the
168 boat was broken, I think they made a greater angle than 6 degrees. Six degrees would not throw the United States much towards the Indiana shore, not as if the angle was greater.

With twelve feet water at grassy flats the United States would run near the channel, and the up-stream boat would run near the channel at the place of collision.

Evidence of Harvey Foster.

And the plaintiff's counsel further called as a witness HARVEY FOSTER, who testified as follows:

I reside in Madison, Indiana, and was a passenger on the United States at the time of the collision. Sappington was also a passenger. I don't know whether he paid his fare or not, nor whether tickets were taken up at the table. I went aboard at 4½ or 5 o'clock. I don't know where Sappington was at the time of collision nor after it. Just before

it he was standing in the passage at the barber-shop; for ten minutes before the collision he was standing there.

169 While I was standing there I heard one whistle of the United States. I heard no whistle in reply to it. After I heard the whistle I did nothing for a moment, then I went forward to within ten feet of the office. I walked fast, probably ran. Mr. Bright remarked there was something wrong, & we went forward. I heard the whistle and bells also; the bells rung immediately after the whistle, and as soon as Bright could tell me that, he started. I went about ½ the length of the boat, to within ten feet of the office, and then started back. I met a negro boy, and he told me to run back or I would be killed. I went back 20 or 30 feet aft of the stove, half way back to where I had been standing, at the gangway, when the collision occur'ed. I looked back towards the office immediately after the collision and saw fire—a blaze; there was glass between the blaze and me. This blaze I saw immediately after the collision of the boats. Then I went out through

170 the gangway past the bar and barber-shop on the starboard side of the boat and aft on the guard towards the ladies' cabin. I saw a yawl swinging up at the stern of the boat. I don't know whether it was taken down or not. I slipped down a staunchеon and got inside the guards aft the wheel, and went over into the water on a board.

I went over on the Kentucky side of the boat; her stern was then down stream; she had swung down then.

On my way down I stopped and tried to take off a door but couldn't, and stopped and took off a couple of shutters of one the ladies 'state-rooms on the gangway. I lifted the shutter off the hinges. After this I stopped a little while to help a man throw a board over. The board was twelve or 15 feet long and 12 or 15 inches wide. The other man had hold of it first; it was rather heavy & up in brackets. I was not there over a minute. I got on the planks and floated down a half a mile

171 before I got on shore.

I saw fragments on the water from the boat burning after I passed the stern. I didn't see the America until I got 100 yards below, may be 50 yards. She was then backing down the river. I couldn't tell whether her bow was below the stern of the States or not. There were bushes 100 yards below me, and she came between me and the shore. The America then went into the shore. The States was out in the river, and the America 100 to 200 yards below. The America sunk at that point; that is, she lay there. I am not certain whether she sunk or not. I saw no blaze on the water, except the fragments. I went back opposite the America, and then the States was burned up; can't tell how long it was from the time I got into the river till I got back to the America, perhaps half an hour. It was a disagreeable night, not freezing, but dark. I don't know whether there was coal-oil on board or not

172 upon the United States. There were some barrels there about the size of pork-barrels; they were not painted; they were ten feet forward of the steps. Before I heard the whistle I had been standing on the gangway 10 or 15 minutes. I can't swear whether I heard any other whistle than this from the States; can't say. After I separated from Sappington in the gangway I never saw him again. After the collision Mr. Bright went outside.

On cross-examination the witness said:

I was standing in the gangway, and Sappington was standing inside the gangway, 4 feet from me, for 10 or 15 minutes; he was not there when I came back. I left Sappington and Vance in the gangway; don't

know whether Sappington and Vance heard the remark of Bright. I didn't see them any more. I ran back when I saw the flames; didn't see Sappington & Vance then, & saw no more of Steel Bright.
173 It was at the back end of the boat that I tried to take off the door. I didn't look behind me to forward end of boat through the gangways as I went back. I don't know whether the wheeles moved or not. After I got down there in the rear, the fire made more light. I guessed I was 100 yards from shore when I got into the river. The America's bow was afire when she backed down past me; don't know how long it was after the collision till I got off, & went into the river. When I noticed her the America was coming; another man was on the plank with me—a deck-hand. I never knew his name; he was a deck-hand; never saw Sappington or Vance *or Vance* or Bright after that.

On re-examination:

I only saw two men further out in the river than I was.

Evidence of A. Thomas.

And the plaintiff then offered as a witness ABSOLOM THOMAS,
174 who testified:

I live in Madison, & have been 20 years on the river as deck-hand, watchman, and mate; have been on the Blue Wing, the Bermuda, and the Lady Pike. I know the place of collision; have passed there, and was there in August and September, 1869. I know where the America and United States lay. The place where the United States lies was dry from where the wheel-house was to the bow on the starboard side; she was not dry all the way up. The water was not as low in 1869 as it was some years before. I have known that place to be dry 10 or 15 feet further out. There was a plain mark made where she lay, made by the dirt and what they shoveled overboard when they raised her. I was on both sides of where she lay.

And the plaintiff's counsel then asked the witness this question:

Suppose the steamers United States and America, the first descending and the latter ascending the river in vicinity of the point of
175 collision, in what is called a grey night, with 15 feet water in the channel, the United States descending with the speed of 15 miles an hour, and the America ascending at the rate of 12 miles an hour; and suppose the United States to have blown one whistle first, and the America, in reply, gave two whistles, and at the time of giving these last signals the boats were a mile apart, approaching, will you state, under the supposed case, whether it would be prudent and safe for the boats to continue at that speed without further signals until within 300 yards apart?

The defendants' counsel objected to the question, because the witness was not competent to answer it, and because it assumes a state of facts not warranted by the evidence, and because the witness is not an expert or a pilot, and because the question is one for the jury and not for the witness, if the state of facts justified it.

The court asked the witness, and he answered: I was first mate 10 years, and have been on the river all my life. The duties of the
176 first mate on watch with captain when he is off, are those of captain. He commands the boat. The defendants admit the question to be competent, but insist the witness is not competent expert; but the court overruled the objection; to which ruling the defend-

ants' counsel excepted at the time and to the answer thereto. And the court having permitted the witness to answer, he said:

No, I would not.

The witness then further testified, as follows:

All the duties of 1st mate on watch, in the place of the captain, are in landing the boat and showing out where he wants the boat to go.

The proper place of a look-out after night is in front of the chimneys, on the roof, so he can see, watch out for boats, snags and shore; there is a good view from the pilot-house out between the chimneys and at the sides, for the pilot-house has windows all around it. They
177 generally have guys so they don't make noise, but I don't know about the United States.

If the up-stream boat give two signals and hears only one in answer, he has a right to ask his pilot if he heard that correctly.

And the plaintiff's counsel asked this question:

If the captain or first mate on watch fails to say anything in such case when he is answered by one whistle, would that be prudent and careful management?

To which question and answer the defendants' counsel objected, because the witness was not competent to answer it, and the evidence was incompetent, and the question asked was one for the jury to decide on the facts, and not for the witness to decide upon a hypothetical case, and the court overruled the objection, to which the defendants' counsel excepted at the time.

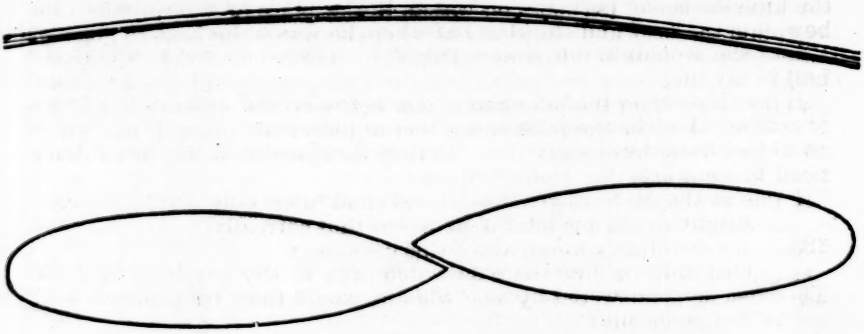
And, subject to the exception, the witness answered:

I don't think it would be prudent or careful for any one,
178 either mate or captain, to say nothing to his pilot in such case, because there would be danger of collision.

The witness further testified: When the first whistle blows there is more or less water in it; a rumbling sound at first; this water is carried out on the roof. When the steam is let out the second time, there is no such rumbling noise. Boats have a bell called the slow-bell, to run over shoal-water or in a dark night; they don't use it to stop. When they stop they strike a gong to call the engineer to his post, and then ring the stopping-bell.

I saw the wreck of the United States and examined it at the ship-yard in Cincinnati. I didn't see it before that. She was struck on the larboard-knuckle or a little aft of the larboard-knuckle, and the other boat went quartering a little aft. She struck aft the larboard-knuckle, and went in quartering this way [the witness here hold' pencils at an angle of about 50° to each other.] She went into the kelson and
179 then glanced alongside the kelson about 10 feet. Where she was first hit the timbers were broken out 10 or 15 feet wide; from position of the boats United States must have been quartering into shore. If coming straight at one another they must have glanced off.

The witness described the description of the break by a diagram, as follows:



The outrige was 10 feet aft of the bow (stem) of the United States; the blow struck about 25 feet behind the stem; from the break of the size of that in the United States, the boat would sink very fast; don't think she would go more than the length of herself. The bow would go down first. To the best of my belief the river was rising in De-
180 cember 4, 1868. If the river was at Royal's Landing couldn't tell about it by sounding the grassy flats.

On cross-examination the witness said:

I live in Madison, Indiana. I ran on the river; was 23 years ago on the Fashion. I went on the John Dremoms also; don't know how long on either. I was a deck-hand and roust about 5 months. I have not been on boat all the time. I do almost anything on shore. I am a wrecker, a diver, and do any job I can get. In the 23 years, I have been off and on half the time. I was 2nd mate on the Lady Pike, 18 or 19 years ago, and mate on the Golden Gate just before Capt. White broke up; then was mate on the Indiana. Since then on the Blue Wing from Cincinnati to Frankfort, and have been on the Nat. Williams up the Kentucky River, City of Quincey, from Louisville to New Orleans, and I have been on many other boats.

181 The captain has no control of the pilot giving signals, except in a gray night, and landing and starting out; no control in giving signals, except when they are misunderstood.

If the down-boat gives one whistle one mile off, and the up-boat gives two whistles, it would not be prudent to run to within 300 yards of each other, at the rate of 12 or 14 miles an hour. The pilots at the wheel have to judge of the distance apart. In a misty night they wouldn't be deceived by distance as much as in a foggy night. In a damp, drizzly, gray night, if snowing, the lights would look further off than it really is. In a misty, drizzly night, it would look coloser than it really was. I don't think any man can stand on a steamboat and tell the distance two boats are apart. A man can see the shore one-half to ¾ of a mile; if it is a misty, foggy night, he may not see it; may see it in gray night. A man upon the roof sees better than a man on deck. He may be deceived in the night as to distance; the shore has nothing to do with that.

My best knowledge of the river was that it was rising on Dec.
182 1st. I had just quit the Lady Grace, or West Wind, I don't know which. I was at Cincinnati looking for a berth Dec. 4.

Me and Mr. Bradford went up to the wreck of the United States the following Sunday after she was fetched there. I never measured the wreck; looked at it casually, walking along, and never saw the wreck again; it was up at the ways. The break was back 20 or 30 feet from the sterm; the knuckle is the part of the hull of the boat where it narrows to the bow, (stem;) it was cut in 10 or 15 feet lengthwise of the boat; with such a hole she wouldn't run over a length of herself. I never was in the hull in my life.

If the ship-carpenter had measured it he could tell the size of the break, of course. I was around there an hour or half hour. The break was 20 or 25 feet from the stem, (bow.) They had been at work building a bulkhead to raise her.

I was at the place where the United States sunk, in 1869, in July & Augurst. She sunk, it might be 100 yards above the America.

183 I could tell where the United States sunk by piles of coal on both sides where she sunk. The gravel shore is tolerably flat. The river had been at a pretty high stage that season. Don't know whether I went up first on the Nat. Williams or the Graham. Don't know anything about the hull of the United States. I went up to the wreck to dive for things, for iron, money, and anything I could find. This was in August. I follow that business, to get anything I can, and if the owners come for it and pay me salvage for it, they could get it. When I went up there I found Mr. Hill diving, and went away then. There was 5 or 6 feet of water there in August. I went back in September; heard there were steam-pipes there, and went up to see if there was anything left. When I got there saw 10 or 15 boys at that place in skiffs; they were from Warsaw. The boys were looking for nickels. I found a great many nickels. The piles of stuff showed the bow was quartering up stream towards the Indiana shore. Stern out in the

184 river. I couldn't see anything of the boat; couldn't see any piles at the stern; they were at the bow.

The ground was dry on the larboard side to the middle. It was not dry on the starboard side so far as that.

The dirt was not in a continuous line; it was in piles. The sand worked up and made a reef of it. The piles were six or eight inches high. There is a bar puts out there. The gravel begins a little above there. The river had been pretty high that spring. Can't say about the current at that place. It does set in some, but not as much as in the bend above. The current runs at the rate of 4 or 5 miles an hour in high water; at a 12 to 15 feet stage there would be 6, 8, or 10 feet over the stern, and 2 or 3 feet over the bow. If she was raised and thrown into shore before the steff was thrown off, the rubbish wouldn't have the stuff is, the rubbish wouldn't show where she was sunk. I wasn't there when the boat was sunk & raised. I am not and

185 never was a pilot, but have steered a good deal.

On re-examination the witness said he was not a licensed pilot. I have steered. I steered the Buell from Carrellton here yesterday evening. There was no fog when the wind was blowing. If I saw a light on a misty night, a gray night, I would tell the pilot if I was on the roof. If the night was so dark that I couldn't see the shore it would not be proper to run. Boats may run in a gray night.

There is no danger in a gray night, with a competent, careful, and prudent pilot, captain, and lookout, of making a mistake of 300 yards in a mile and a half.

In a gray night, two boats approaching at 12, 14, 15, miles per hour, it would not be prudent to keep on.

The Nat Williams and the Graham were small boats. I can't tell how

much the stern quartered out. I should guess the bar commenced about 150 yards above where the States lay, and went quartering against the Kentucky shore down the river. There is a bar on both sides.
186 I have seen the bar dry 50 yards further out than it was at that time, when I was there in September—50 yards furth'r out than the place where the States was.

Evidence of R. Lee.

And the plaintiff then called as a witness ROBERT LEE, and he testified that he lived near Bryant's Creek, a quarter or a half a mile from the river. He remembered the United States sinking. Saw her repeatedly before she was raised. They towed her off. I was there when the Underw'iter towed her off. She towed her from the place where she was raised. I don't know how long it was after the boat was sunk, till she was towed away. I have been acquainted with that locality for 20 years. Used to follow the river, and since 1856 lived there. Have seen ground in fall 1858 or 1859; it was dry 30 to 40 yards beyond where the States lay. There was no bar above where she sunk. The bar puts out right
187 there, and she sunk just at the head of the bar.

In 1869 I don't think the bar where States lay was entirely dry there. The stern aft of midship was not entirely dry in 1869. Nothing indicated where she lay, only the fragments thrown over when making preparations to raise her. I didn't notice particularly how far the water was down. They shoveled this off before she was raised. The stuff shoveled off was about straight. There were two ridges, the shape of a boat, running up and down stream. I saw the boat burning from my house, and did go down, because I thought it was coal-boats.

On cross-examination the witness said:

I saw the principal part of the cabin of the United States from my house the morning after the boat was sunk. The river was rising rapidly, and the forward part of the boat and wheel-house was out of water. The river rose 6 feet, and then fell to about the stage
188 when she sunk. The water was off her forecastle when she was raised. I don't think they threw anything off the stern; if they did it never appeared. I walked across to the forecastle next morning, and wasn't over boot-top deep. The water was very shallow on her forecastle. I walked across in front of the stairs. The way goes up to the cabin about midway of the engine. The water was about half way up to the stove in the cook-house. The break was under water, and I couldn't see the edge of it. The main deck was broken ahead of the deck. The break was started about five feet from the stem, (bow,) and was as much as 12 feet in length. The wheel-house outside was not scorched; both wheels stood upright; but on the Indiana side it burnt out. She settled down on the head of the bar, just as it put out from the shore. In very low water it gets dry out considerably in the river. I think I have seen that bar dry 30 or 40 yards further out than in 1869, but I am not certain how many yards further out I have seen it.
189 The Underwriter lay outside of the United States. I think the Underwriter didn't push her towards the shore, but started right off. They took her up bow foremost. I was on the shore when they started, opposite the boat.

There were no ridges of the stuff aft of the boilers. What there was thrown out was rubbish of all kinds, screws, hinges, nails. It was a regular ridge, continuous. A string or ridge raised the ground a little. It was 60 or 75 yards from the bluff bank to where the United States

sunk. The water was not up to the bluff bank by 30 or 40 yards, and a 6-feet raise didn't take it to the bluff bank. After a 6-feet rise there was room for 100 to 150 persons between the water edge and the bluff bank. I didn't measure, but estimated the distance.

On re-examination the witness said:

That in the cook-house of the United States the water was between two & three feet deep the morning she sunk. By night the water was over the top of the stove. I can't say how far this stove is
190 back of the bow. It is right oppos'te the engines, a little aft of the half of the boat. It is about 150 feet from the stem (bow) to the kitchen. They had to cut the guards before they reached the hull. They had to cut the guards before reaching the hull. It was a hundred yards from the bluff bank to the water edge at lowest water—1858 or 1859. I have seen the bar 100 yards wide from the bluff bank to the water edge. It was 150 or 200 from the wreck of the America to the wreck of the United States.

Evidence of I. Jackson.

And the plaintiff then introduced, as a witness, IBZAN JACKSON, who testified that he lived in Posey Township, Switzerland County, Ind., a quarter to a half mile from the place of collision. I saw the steamboat United States after she sunk, and before she was raised. I have known that place 20 years. I can't positively saey how far out it
191 gets dry. I was there in 1869, and saw piles of rubbish that had been thrown off the boat; and these piles were out of water, dry, in the fall of 1869. They were torn to pieces by persons in search of things. These piles were not very far out of water. The water had receded and left them. I don't remember wheth' the water was as low in 1869 as in previous years. I think not. In dry seasons I can't say exactly, except that there is a bar that puts out from the Indiana shore, and I think it was not as bare in 1869 as I have seen it.

Evidence of J. A. Keith.

And the plaintiff then introduced as a witness JOHN A. KEITH, who testified as follows:

I live a little more than a mile from Rayl's Landing, and remember the matter of this collision. I don't know whether the river was rising or falling at the time of the collision; it rose the next morning,
192 and was higher afterwards. I have known the river there for 20 or 30 years. I saw the United States the morn'ng after she sunk. I don't know how far out it gets dry opposite there. The United States lay on the head of a bar, and that bar below gets dry 200 yards below that place; the bar ran quartering out with the bow up stream; the stern of the United States was nearer the Indiana shore than the bow; the bar runs quartering out stream. Some years ago I saw men ploughing out the boulders 200 yards out from the edge of the water; at the shore, in the summer of 1869, where her bow lay, it was dry, but I don't know whether it was dry or not at the stern of the United States in the summer of 1869. I can't say how far out the bar gets dry, opposite or at where the stern of the United States lay. I can't tell anything about it; perhaps there is a space 100 feet wide that is dry some seasons; the bar puts out a little below the township line, between York & Posey townships.

193 On cross-examination the witness said:

At the time the United States sunk the river was half a mile wide, perhaps over that; she sunk at the head of the bar; the bow was up on the bar, and the stern of the boat lay along the bar.

I said I did not know how far out it got dry right where the boat lay. The bar extends down 200 y'*dr*'s from where the States lay. I didn't gather boulders myself, but saw men gathering them below where the United States lay, from there down. The place where the men ploughed for boulders was from where the boat lay to a place some 200 yards below, and the place between the upper part of the bar and the shore gets dry, but I don't know how far down. I have seen dry land outside of the bar; the bar gets naked from the shore, or down 200 yards or more; but there is a pocket that comes in behind the bar, that always has water in it; from the bluff bank to the water edge, it when I saw it, &c., was about 50 yards. I saw the men plowing for boulders, 150 to
194 200 yards below the boat, but not very far from shore; can't say how far it will get dry some 100 feet out from the bank; (when I saw it, it came in from behind the bar below. I can't say whether it ever gets dry in the pocket at the point where the stern of the boat lay; the boat lay upon the bar; the bar is joined to the shore.)

The U. S. lay but little ways from the water's edge that morning.

On re-examination, the witness said:

The America lay below Bryant's Creek, at the shore inside of the bar; the dry bar runs to a point in low water to near where the States lay; the bow of the United States lay on the head of the bar, and the stern between the bar and the shore; the stern of the States lay somewhat inside of the outer edge of the bar.

Evidence of Eli Rayl.

195 And the plaintiff next called as a witness, ELI RAYL, who testified as follows:

I live in Switzerland County, Ind., and own the landing opposite the place of collision. I have lived there seven years. I know where the steamboat United States sunk. Where the U. S. sunk, in very dry seasons, the water recedes and leaves the place dry some 10 to 20 step' below and outside where she lay from the place where the bow lay some 10 to 20 steps right straight out towards the Kentucky shore. Her stern lay on a bar that puts out from the shore above where the States lay, and runs quartering down the river, between the stern of the United States and the Indiana shore. The descent is gradual. In very low water there is no water between the place where the United States lay and the shore. The boat quartered out very near parallel with the bar. The stern was a little nearer the Kentucky shore than the bow was. The bar make' gradually from the bank. I can't say how wide it is. It extended a little distance out from there, but be-
196 low it went out further. Where the boat lay, it was dry in 1869. I think the water was lower in 1867 than in 1869. I was at home the night of the collision, in bed and asleep. I think the noise of the collision awakened me. I got up in bed and looked out, and saw a light very plain. I went to the window and saw the boats on fire. The United States was all in flames then, when I looked out. I saw nothing but the chimneys and the flames. The fire was all extending back. The bow of the States appeared, when I looke' out, to be up stream.

My wife was awake. She had not fallen asleep. As I rose in bed I saw the light; got up at once, went to the window, and saw the boats on fire. After I looked out I put on my clothes and went to the boat to the edge of the bank. The braze was very strong. I wouldn't liked to have gone to the water's edge. There were some persons out in the field—some getting out of the river & up the bank. The America was below the United States, and opposite sone wellows. After I got
197 down there to the bank, the America commenced burning. She never moved after I saw her. The flames had got clear up in the cabin in the United States when I got there. I saw 2 or 3 or 4 persons on the United States right in the flames; saw persons in the river, trying to get ashore—half a dozen or a dozen—some near to the shore, some out in the river. About at the water's edge and getting up the bank, I saw 4 or 5 persons. The United States didn't move after I got there. It was 50 yards, in my judgment, from the water' edge to the United States. I think there was a mass of flames on the water as well as on the boat. The flames on the water were all between the boat and the Kentucky shore. There were flames as of something burning on the surface of the water. I told the passengers in the fileds to go to my house. A great many of them did so. I can't give the precise number of dead bodies. I saw seven that had been burnt so that you couldn't tell them. I saw 27 laid out on the bank Sunday or Monday.
198 There were persons there taking them away. Other persons were grappling for bodies. This and taking them away continued several days. I saw some middle-aged men, & some 50 or 60 years old; didn't see many young men; saw one little boy. I couldn't say where the bodies were taken to, nor by whom they were taken away. I don't know whether they were all recognized or not. Some lay there a few days on the bank. I live 20 yards east of the section-line between section' 33 & 34.

On cross-examination the witness said:

The United States sunk a quarter of a mile below where I live; when I first got up out of bed she was about the same place; I had just laid down and fallen asleep. I heard no whistle. I went to bed about 10 o'clock.

I heard screaming on the bank; my wife told me she heard a crash. I put on my clothes and went down. I saw 3 or 4 persons in the flames in the middle of the boat, they were standing in the flames. When
199 I first saw the flames they had got near the wheel-house; when I got down to the bank the flames were all over it. I saw some person' inside the cabin; they had their hands up; some were standing in the flames throwing their hands up, some tumbling down. At the America I found a large number of people in the field. I saw where the United States lay by the piles of trash; it was thrown off aft of the boilers. It was all thrown off from the aft of the boat. That was all the way I knew the boat lay. The winter & spring following the river was up pretty well. I saw piles of dirt where the stern was. The water on the steamboat was about over the boiler-deck. I don't remember whether the water rose soon after; don't recollect a 6-feet rise. I saw them shoveling piles of dirt off the stern of the boat.

The bow of the United States lay up stream on the bar; the bar puts out from the Indiana shore and extends down the river. I know it is shoal all along there. The bar was highest in the middle. It extends
200 from the place where the along down the river; there is a bar 80 or 100 yards from the main bank, the bluff bank.

I saw the steamboats Underwriter & Graham there some time; saw them raise the boat, and start right off with her. The Underwriter was on the Ky. side of the States; don't recollect whether the boat was towed bow or stern formost. The America was tied up when I got there.

On being re-examined, the witnsss said:

I heard screaming on the boat while I was at the window at my house. I went down to the boat nearly every day after that during summer, 1869. I saw them shoveling stuff off the boat aft of the boilers, when the Underwriter came there.

Evidence of Mrs. Eli Rayl.

The plaintiff then introduced Mrs. Eli Rayl as a witness, who testified:

I am the wife of Eli Rayl. I remember the night of the collision.
201 I don't think I had gone to sleep. I heard the whistle; I don't remember how many; heard nothing that I thought was unusual. I can't state how long it was after I heard the whistle till the collision; I heard a crash, and supposed it was a collision, but didn't know what it was. The next thing I noticed was the light through the window of my room. When I spoke to my husband I though he was asleep; can't say how long it was after I heard the crash till I spoke to him. I got up, but didn't go to the boat; he got up, and looked out first, and told me there was a boat on fire. I went to the boat next day, and saw persons get on the boat. On Sunday I went down to the river; saw some dead bodies, but didn't examine them, & don't remember counting them; was under the impression there were 8 bodies.

Evidence of Chas. Dufour.

The plaintiff then introduced as a witness CHARLES DUFOUR, who testified as follows:

202 I am in command of the present steamboat United States. I was not on the United States in Dec., 1868; was on the America, as pilot, that year.

I don't know what kind of fluid was used in the lamps on the United States; don't know whether they burned coal-oil or not.

The position of the baggage-room was forward behind the main steps. I don't know whether they kept a lamp burning or not there.

The pilots of the Mail Co.'s boats acted as pilot & lookout, both. I don't know the diameter of the chimneys—probably 50 inches. From Capt. Summon's farm to the Warsaw Bend is a mile; from his farm to a point below where the collision took place there is a slight bend. When in the channel there is nothing to obstruct the view from opposite Capt. Summon's house. Suppose two boats, one going down opposite Cap. Summon's house, and the other going up in Warsaw Bend, it would be proper for the down-stream pilot to signal first if he
203 thought the up-stream boat was getting close enough. If I knew she was a mile off, I would signal first, going down stream, but I might be mistaken in the distance.

Oliver H. Rayl.

And the plaintiff then offered as a witness OLIVER H. RAYL, who testified as follows:

I am a son of Eli Rayl, and remember the collision. I had been in

Florence that night, before the collision, and was at home and in bed at the time of the collision, and asleep. I was awakened up by Noble Ross and Robert Ross; I got up immediately, as soon as I could; those two persons had been with me at Florence.

I went down to the United States; she had sunk when I got there; she was afire from back of her wheel-house to the bow. I got there before my father did; I could see the smoke before I got there, when I got out of the house.

204 The America was in the river backing down from the States. I saw persons in the water, from the wheel-house back, 10 or 15 at a time; some were longer getting off than others; I couldn't say how many bodies were taken to the shore burnt; some were taken off on different days and taken away. At one time I saw six burned bodies there, at another, six to eight bodies, but they were not all burnt. I was there most of the time, off and on; I suppose their ages ranged from 15 to 60, & of different sizes; I don't know how long they were take*n* the bodies away. Some were dressed and some had no coats on; all the women I saw had their ordinary apparel on. I saw persons coming up the bank; saw some get off the States, and saw other women who didn't get off the United States; I saw some jump off the stern, but didn't see any get off the America. I ran down from the house to the boat as fast as I could; I suppose it took me ten minutes to get there.

205 In the lowest water I have seen it dry outside of where the United States sunk, thirty feet, as near as I can tell; I have seen it dry over the space within a line drawn from the bow of the United States to the Indiana shore, and a line drawn from the stern to the same shore; that is, the space between the bank and where the United States lay was all dry, from the States down the bar 100 yards; I have seen it all dry; the bar goes further down than where the America lay.

On cross-examination the witness said:

I was asleep when the collision occur'ed. The Ross's woke me up. I saw the light. I sleep up-stairs. The light reflected in the room, but I did not see the boats. I saw my father; he came down after me. It is a quarter of a mile from the house to the boat. I stopped on the bank, 20 yards from the edge of the bank. I suppose the flames were blowing on the Indiana *saw*. I saw some persons on the United States behind the wheel-house moving about in the flames; I suppose two or three minutes. The America was not burning when I got down there;

206 she was backing down. I saw, I think, ten persons jumping off the United States; some of them were women. I can't say whether any children. The United States was so far from shore that another boat might have passed between her and the shore. It was medium heat where I stood. I could feel it. I didn't go down the bank because the cry was, the boat would blow up. I didn't stay away on account of the heat. The water was not over the lower deck then at the stern; *a*t was at the bow. I don't think the water got over the stern; it was not over it the next day, but the bow was under water.

I have lived there 7 years. I could tell where the States sunk by the piles of trash thrown off on each side part of the length of the boat in front of the wheel-houses. I saw the wreck after it was partly raised. There was a black line burned on the starboard down to the water's edge. These stanch*e*ons were on the lower or main deck, and

207 held up the cabin and guards above, and all burned even and level. I have seen it dry outside of the outer piles of dirt 20 or 25 feet. There was no water between them and the shore. Below where

the States lay th're is water *been* that and shore. Have seen outside of that dry since the boat sunk; have seen it dry beyond those piles; guess it was lower in 1867 than in 1869. The ladies that we got off were taken out of the stern of the boat. The burnt bodies were got out Sunday.

On re-examination, the witness said:

I stood up in the road looking at the boats, on the bluff bank; didn't go down in the gravel. The bodies we got out Sunday we got out of the stern, down in the hold; some in the forenoon and some in the afternoon. There was water where we hooked them up. The hull was nearly full of water; it was ten feet from the stern.

208 The plaintiff then called as a witness ABE ROSS, who testified as follows:

I have run on the steamer Liberty No. 3. I had been at Florence that night, and was at Rayl's house when the whistles blew. I hadn't gone to bed. I heard the boats signal after I got to Rayl's. I didn't hear but three whistles in all sounded. I can't hardly tell whether two were blown first or one; can't tell which blew first. I was sitting on the bed. The three whistles drew my attention at once. If boats want to pass each other they blow either one or two whistles, and the other gives either one or two.

It was the 3 signals that attracted my attention; when I noticed four were not given I told my brother to go to the window & see what was the matter. He went and said there was nothing but two boats passing. Then I stepped to the window myself, and just as I got there the noise came to my ear and the flames lit up. There was considerable of

209 noise; it shook the house. I then went out of doors as soon as I got my boots on, and run down to where the boats where. From the house to the river was a hundred yards. I didn't go to the edge of the river; went to the bank; could see the boats there. When I got out of the house the bow of the United States was pointed towards the Indiana shore, & she was swinging around. She had got clear around before I got there, & was stern down when I got there, & had settled down when I got opposite her. When I got in sight the America was just below the States, dropping down. After I got to the road I had to run 300 yards to get opposite the States. I have known that spot 4 years where the States lay, and below there it gets dry where the States lay in low water; and the space where the U. S. lay and the bank all get dry. There is a bar there.

On cross-examination, the witness said:

I am 24 years old. Lived in Florence 4 years. Came there from

210 Lawrenceburgh; run a month or two on the Liberty; that was a tow-boat. I was a hand a while and watchman a while. I didn't take any drink that night. I went there with Oliver Rayl; didn't room with him. Neither my brother or I had gone to bed. My boots were not off. I hollered to Oliver and the old man while I was sitting on the bed. Wind was blowing from the Kentucky shore.

There was a short time between the whistles. I don't know which boat blew first. Boats were below the house when they struck each other 300 yards; may be not so much. It was 300 yards from the house down to the boats. States' bow quartering in when I got to the bank, and the America was not much on fire. I didn't see the America between the States and the shore, and didn't see any one get off the States on to the America. The States was settling down about that time;

her guards were under water, & there was water on her decks
211 behind. I have been on a boat called the Hoosier. I never stopped at Rayl's landing on her. I have been down there digging for little things; was there in 1870 digging for things.

And the plaintiff's counsel then in evidence the deposition of B. F. Beall and John Fathergill, taken at Warsaw, Ky., Feb. 24, 1871, in one package.

Deposition of B. F. Beall and John Fathergill, witnesses produced and sworn to before me, Rod Perry, clerk of the circuit court in and for the county of Gallatin, State of Kentucky, on the 24th day of February, 1871, pursuant to the enclosed notice and agreeably in all respects to the same. Said depositions were taken on the part of the plaintiff in a certain action pending in the common pleas court of Switzerland County, in the State of Indiana, wherein Charles Alling, administrator of the estate of Otis B. Sappington, dec., is plaintiff, and Thomas Sherlock, Moses Andrew, Christopher G. Pearce,
212 D. C. Benedict, Zachariah M. Shirley, Frank Carter, et al., are defendants.

Evidence of B. F. Beall.

The said , being duly sworn to testify to the truth, the whole truth, and nothing but the truth, relating to said cause, deposes as follows:

Question 1st, by ptff. What is your age, residence, and occupation; and where did you reside Dec. 4, 1868?

Answer. I will be 48 years old if I live to see the 1st day of March next. Reside now in Warsaw; did reside Dec. 4, 1868, one mile above Warsaw, on the Ky. side. I am *know* deputy sheriff; was, in 1868, a farmer.

Question 2. Did you know the steamers United States and America? If yea, do*u* you know of any collision between ; and if yea, when and where?

Answer. I know them both. I know they run together. It was about a mile above this town, and was somewhere about Christmas, 1868.

213 Question 3. Where were you at the time of collision? State what you heard and saw, if anything.

Answer. At the time they ran together, I was in the bed; when I heard the crash, I sprang out of bed and opened the door, & they were sticking together. I saw the America back out from the States, and she ran ashore and landed near a hundred yards below the States, and as the States was drifting against her I heard some one hollow out: "Back her out, or you will burn up!" She didn't back out the' until the other drifted against her. Then she backed out, and was on fire, and landed near 100 yards below and then burnt up; that was about all I heard at the time.

Question 4. State what whistles you heard, if any, & when, compared with the time of collision.

Answer. I couldn't state that I heard any whistles, except just
214 about the time the crash took place; just about the time they struck.

Question 5. What time did you retire that night, & how long before the collision? and state whether you had been asleep or not?

Answer. It was tolerably late when I went to bed. I don't now recollect the exact time. As to saying whether I was asleep or not, I could not say. I hardly think that I was asleep, or had been asleep.

Question 6. Have you ever steambo'ted; if so, how long? Can you state how these boats before this night passed at said point of collision?

Answer. I have steambo'ted some. I was a little over two years on the boat. I don't know that I could tell how they passed, for I don't think I ever saw them pass right there.

Question 7. If you have seen them pass above or below the point, state how they usually passed.

215 Answer. They would pass, the up boat on the Kentucky shore; and a little above and as much as a half or three-quarters of a mile above the collision, the up boat would take the Kentucky shore.

Cross-examination by defts.' atty.:

X 1. Q. Was the steamboat United States backing when you firt looked out?

Answer. I hardly think she was. I think she was about to begin, & directly did back. It was but a few seconds until they were apart.

X 2. Q. Which way was the bow of the United States pointed when you first looked out?

Answer. Well, it was pointed rather a northwest course; with reference to the shore she was pointing rather down the river and towards the Indiana shore.

X 3. Q. Was the United States on fire when you first looked out?

216 Answer. Well, I could hardly state; it was so small that I could hardly state; it was so quick that I could hardly see. She soon loomed up with a pretty heavy fire.

X 4. Q. You say that the United States did back directly after you looked out; did she commence backing before the fire "loomed up," as you say?

Answer. I don't think I said the United States backed; if I did I meant the America. I never saw the United States back at all.

5. X-q. Did you see the stern of the United States swing out into the river, down stream, just after the collision?

Answer. Yes, sir.

X-q. 6. How far out into the river did the United States swing after the collision?

Answer. I reckon she was 150 to 200 yards from the Indiana
217 shore. It was a hard thing to tell the exact distance, looking from this (Ky.) shore; but this is my judgment.

X-q. 7. What time do you mean she was 150 or 200 yards from the Indiana shore—at the time you first looked out, or when she had swung out after the collision?

Answer. It was when I first looked out.

X-q. 8. Was the United States all on fire before her stern swung out and around down stream, or not?

Answer. She was not all on fire.

X-q. 9. To what extent did the fire prevail on the United States by the time she had swung around, stern down stream?

Answer. Well, I don't think it had burnt any aft of her chimneys; the fire was burning around her chimneys when she swung around.

X-q. 10. Do you mean to say that the fire was burning around
218 her chimneys at the time her stern was down swinging around?

Answer. She had swung around until her stern was about two-thirds of the way around down stream when the fire got about her chimneys.

X-q. 11. How far do you think the boats were apart at that time, and which one was nearest the Indiana shore?

Answer. The America was lying on the Indiana shore; and I would judge them at the time we were speaking off from 50 to 75 yards apart.

X-q. 12. Which boat was furthest down the river at that time?

Answer. The America.

X-q. 13. When the United States had swung out from the America, just after the crash, and around ⅔ of the way, as you describe, which way did she go then, back or forward on the engines?

219 Answer. I can't say that the engines moved at all.

X-q. 14. Do not long boats like the America & United States aim usually to shape out the channel about that place in that stage of water?

Answer. I should think not, sir; there was plenty of water to run anywhere.

X-q. 15. Was there not an obstruction below there on the Kentucky side of the channel; I mean the wreck of the Tom Scott?

Answer. Yes, sir; there was at that time the wreck of the Tom Scott on the Ky. side of the channel some distance below the collision, between there and the collision at Warsaw.

X-q. 16. Do not long boats like the United States and America shape out the channel in running there more closely than short boats do?

Answer. I would suppose they did; no boat will run over an
220 obstruction if they know where it is, long or short.

X-q. 17. Did you ever set up at night to watch how these boats usually passed each other about that place after night?

Answer. No, sir.

Re-examination by plff.' atty., direct:

Ques. 1. When you use the word shore, state what you mean.

Answer. I mean where the water was at the time; where the water's edge was on the ground.

2. By same. Did the fire reach the stern of the States before or after she swung against the America?

Answer. It was afterwards.

By same. 3, What part of the America did the stern of the United States swing against, and what was her position as to the bow of the America?

221 Answer. The stern of the States struck just forward of the wheel of the America. The bow of the America was all forward of the stern of the States.

4. By same. How far below the place of collision was the wreck of the Tom Scott, & how far out from the Indiana shore?

Answer. I would judge about 400 yards, or might be a quarter of a mile below, and more than three-fourths of the way across from the Indiana shore.

5. By same. Did the wreck of the Tom Scott make it necessary for the two steamers to run to the place of collision, & if not, why not?

Answer. It did not make it necessary; there was plenty of room outside of her for three or four boats to pass.

B. F. BEALL.

John Fathergill's deposition.

Also the deposition of JOHN FATHERGILL, who, being duly sworn, &c., as per caption, deposes and says:

222 Question 1, by plaintiff. What is your name, age, occupation, & residence?

Answer. My name is John Fathergill; my age, 53 year'; occupation, farmer; reside in Gallatin County, Kentucky.

Q. 2, by same. Where did you reside in Dec., 1868?

Answer. In Switzerland County, Indiana.

Ques. 3, by same. What you know, if anything, of a collision of the steamers United States & America, as to the time and place of the same?

Answer. I know that there was a collision; didn't see it. I heard the noise when they run together. I was close by; it was right opposite Rayl farm in Indiana, and opposite the Frank Beall farm, & on the Indiana side. It was in October or November; I disremember now. It was in cold weather. Can't give the date.

223 Q. 4, by same. Where were you at the time of collision, and how far from the place of the same?

Answer. I was in bed when the boats ran together; had just gone to bed. I couldn't have been over 5 or 6 hundred yards from that.

Q. 5, by same. State what whistles from the steamers you heard, if any, before the collision; & if anything caused you to notice the whistles, state what it was.

Answer. I noticed that one boat gave one distinct whistle, and after waiting the usual time the other gave two; that drew my attention, and about the time the boats run together I heard one little short whistle—I don't know from which boat; it was just about the time of the crash. I don't know which boat whistled first. I knew from the whistles, one boat whistling once and the other twice, that it would draw them together, & that is what drew my attention.

224 6 ques., by same. State what other whistle than those you have named' if any, were given before the collision; and state what boats collided.

Answer. It was the America & States that run together. I heard no other whistles than those given before the collision.

7 Q., by same. How long have you known the river at the place of collision, and how near have you resided to said place?

Answer. I have known the river there some 30 or 40 years; lived right on the river-bank 5 or 6 years, just before the collision occurred.

8 ques., by same. State whether the steamer United States sunk or not after the collision?

Answer. She sunk after the collision.

9 Q., by same. If you know how far from the Indiana shore the
225 Ohio River becomes dry, or the water recedes in dry seasons, compared with where the steamer United States sunk, please state.

Answer. I was there after the dry season set in several times, right where she sunk; was out on dry land; I picked up several little things there. I don't remember the distance, say some 15 or 20 steps, not over fifteen; it was a short distance.

Cross-examination by def'ts' atty:

X Q. 1. How long did the United States lay there before the wreck was taken away?

Answer. She lay there some time. I don't recollect; a week or ten days; don't recollect; guess-work, that part; say a week or 10 days.

X 2. Q. Did you go on board the wreck while it lay there?

Answer. Yes, sir.

X Q. 3. How did you get to it?

226 Answer. By way of the ice; on the ice.

X Q. 4. How many times did you go to the wreck on the ice?

Answer. I couldn't say; three or four times.

X Q. 5. How soon after she sunk did you go on the wreck the first time?

Answer. It was several days.

X Q. 6. How long after you went on it the first time did you go on it the second time?

Answer. I couldn't tell that.

X 7. Q. Tell, as near as you can, how many days.

Answer. It might have been a day or two or it might have been several days. Can't say.

X 8. Q. How long after the second visit was it until you went on

227 the wreck the third time? State as near as you can recollect.

Answer. I can't answer that any better than the other question. Was on it several times—three or four times. Whether it was just after the thing happened or just before she left, couldn't say now.

9. Q. State how long after this third visit until you went on the wreck the fourth time. State as near as you can how many days.

Answer. I would just give you the same answer.

10. Q. How long after that until your fifth visit on the wreck?

Answer. Have to give you the same answer. Don't think I said I was on it five times.

11. Q. What did you go into the wreck for the first time?

Answer. There was a boat came there to take freight from the

228 wreck, and they engaged milk & butter from my wife, and I went to take it to them, and crossed the wreck in doing so.

12. Q. What "little things" did you pick up that you have spoken of in your examination-in-chief?

Answer. Little bedstead-rollers & hinges, door-hinges, and several little things of that kind.

13. Q. Where the cabin and the wheel-house destroyed by fire when you first went on the wreck?

Answer. Everything was burnt down to the deck; that is my recollection. There might have been something about the wheel-house sticking up.

14. Q. I understand you to mean, then, that all the boat was burned to the water's edge except a post or two that may have been sticking up. I' that correct?

Answer. There were timber' about the wheel-house not burnt, &

229 the heavy timbers. I mean that all the light part of the boat was burnt.

15. X. In your answer to the 12th cross-question, have you stated all the "little things" you found or picked up?

Answer. I have. I think I left them lying there after I picked them up.

16. X. Did you take nothing away with you, none of these "little things?"

Answer. I don't recollect; I don't think they were worth taking away.

17. Q. What time of the year, what month, did you pick these things up?

Answer. It was after the river went down. It was the summer after the collision—in July or August. That's as near as I can guess at it.

18. Q. How came you to find them? Were you searching for "things?"

Answer. I was looking around and found these things.

230 19. Q. What boat was down there alongside of the wreck taking off freight?

Answer. I disremember the name of her.

20. Q. What boat towed the boat up the river?

Answer. I forgot the name of that boat too. It might have been the same boat and might not.

Q. 21. Did any one visit or go on the wreck with you on the several occasions?

Answer. Not any one in particular that I can remember; no one started with me; there might have been some one gone.

Q. 22. Did you find the "things" you spoke of on the surface of the ground or did you dig them up?

Answer. I found them on the surface.

Q. 23. Did persons in the neighborhood go on the wreck and carry "little things" from it to the shore, after the burning?

231 Answer. I don't know that they did.

Q. 24. Do you not know that various persons searched the wreck, found things, even watches & jewelry, on it, & took them ashore?

Answer. I don't know that. I heard of things, but don't know it.

Q. 25. Is there not an eddy there that accumulates sand and mud or gravel along that shore during the winter & spring months?

Answer. There is a sort of a bar that puts out there, rather below where the State lays. You may say it commences where she laid. I never saw any increase of mud or anything there until these boats sunk. It went away by washing the banks up to that time.

1. Redirect by plff. Was the river higher or lower after you were on the wreck the last time?

Answer. Lower.

232 2. By same. Can you state whether in 1869 the river was at its lowest stage?

Answer. I think I have seen the river lower than it was th*at*.

3. By same. If you noticed any marks or deposits after the States was raised that indicated where she had lain, state what they were.

Answer. One mark was this: I was there, and saw them throw off different heavy substances each way, it being so cold that the wreckers got tired of moving the things off the boat, and commenced throwing the things off, so that they could get the boat up; that is about all I have to tell from.

4. By same. You state you saw them shovel things off; what kind of things?

Answer. I noticed stone-coal, iron hoops, and other heavy substances I don't remember; iron things that wouldn't burn.

233 Q. 5. Was there any melted glass? If you saw these substances afterwards, where were they, & where was it; were they in one pile or in a row or rows?

Answer. There was melted glass. I think they were lying in a pile on the ground after the boat was gone.

Q. 6. Down to which deck did the United States burn?

Answer. Down to the boiler-deck—the deck the boilers were on.

JOHN FATHERGILL.

STATE OF KENTUCKY,
Gallatin County, ss:

I, Rod Perry, clerk of the circuit court in and for said county, hereby certify that the above witnesses, B. T. Beall and John Fathergill, were by me first duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth relating to said cause, and titled in the caption hereto attached; that their depositions were reduced to writing by me and the said Charles Alling, admr., attended by
234 H. W. Harrington, esq., his attorney, and the defendants, Thomas Sherlock et al., attended by James Warnock, esq., their attorney, and said depositions were taken at the office of the clerk of the Gallatin circuit court, in the town of Warsaw, county of Gallatin and State of Kentucky, on the 24 day of February, 1871, between the hours of 8 a. m. and 6 p. m. of said day, in all respects according to the annexed notice.

I' testimony whereof I have hereunto set my hand and seal of office, this 24th day of February, 1871.

[L. S.] ROD PARRY,
Clerk G. Cir. Ct.

The map referred to by the witness, now introduced in evidence, is as follows: (This map is not on file.)

And then the plaintiff called as a witness WM. H. KELSO, who testified as follows:

235 *Evidence of Wm. H. Kelso.*

I am a steamboat pilot between Lou'sville to Cincinnati, but licensed to Memphis. I am now a pilot in the employ of the Mail Co. on the United States, that was buil*d* since the other was burnt.

The witness being shown the county map above referred to, said, I don't like the shape of the river. That shore ought to be perfectly straight.

Rayl's house is one mile below Summond's. It is 2½ miles by the channel from Capt. Summons' house to Warsaw; 3 miles from Lane's Hollow to Warsaw.

The up stream boat takes sides depending upon the stage of water. At 14 to 15 feet, or stage at the time of the collision, I would take either side. Part of the time we changed sides. There is a place where we change sides; part of the way we take one side and part the other. Part we go to the right and part we go to the left. From Warsaw half-way up to Summons' house the up-stream boat usually blows one whistle and takes the right: the other half, from Warsaw to Summons' house she takes the left side.

236 If the States was going down, and I upon the America, and about to meet each other opposite where the America sunk, I would blow two whistles, & lower down I would blow two. If on the America going up, and about to meet a boat where the States sunk, I would blow one whistle.

If the America was ¾ of a mile below where the States sunk, and the other boat was ½ mile above, I would blow one whistle.

If the America was going up at a point near Warsaw bend, and the States was goin*d* down, there is a difference of opinion as to the States blowing first. If they were a mile or more apart, I think she ought not to blow first.

Plf's attorney asked witness, "If the States was descending in a gray

night at 15, and the America ascending at 12 miles an hour, and the United States blew one whistle and the America two, state whether or not it was their duty to stop.

The witness answered it was, if the pilot heard the whistles.

237 A copy of the pilot rules was here shown the witness.

The witness proceeded:

I can't tell in dry seasons and low water how far the water recedes where the States sunk; got no mark to tell. It is only guess-work how far out it would be in low water. I can tell pretty near how far it would fall perpendicularly, but not along that shore. I think the bow would get dry, but that the stern would not. There is a gravel bank and a main bank there. After it has fallen two feet or so; then the grade after that is not quite so steep. As water falls, the ground gets flatter. I've not seen the river since the collision as low as I've seen it before.

There is a rock down in the river near Florence. It is mere guess-work whether it makes any difference on the water. It don't make any difference at 30 inches.

On grassy flats there was 28 inches at the lowest stage I ever knew between Madison & Cincinnati in 1854. There was 24 or 25 inches on Warsaw bar. I wasn't piloting there; was boating. Warsaw bar

238 doesn't cut. The river do'sn't rise in same proportions below as it does at a certain place on the bar at the stage of water in December, 1868, if running at full speed. The part of the river where they wouldn't run with good steering would be much narrower that the part where they could pass without hitting bottom.

They might pass over 300 or 400 hundred yards without hitting anything on bottom.

If the States were running at 15 miles an hour and the America at 12, and the America gave one whistle and the States one whistle, there would be no probability of collision if they were a mile apart when they were blown, at that stage of water and place.

If the States, at 15 miles per hour, had given 2 whistles, and the America only one whistle, it wouldn't be prudent to run on at the same speed, if they understood each other's signals.

It would be the same if the up-stream boat blew two and the down-stream one whistle; it would not be prudent if the pilots understood the whistles.

239 If the America blew two and the States none, it would not be prudent to keep on without blowing, if within 800 yards. When one gives signal for the right, and the other crosses the signal, they can't pass on the same side safely.

In 1868, Dec. 4, there was 18 feet water at Cincinnati, 12 or 13 on grassy flats, and 6 feet on the falls, at the lowest stage of water; 1869, there was 3 or 3½ feet in the channel. At a 3-feet stage there is the same water all the way through.

We have 5 bells or 4 bells, and a gong. The gong is to notify the engineer to land; 3 taps to run slow or prepare to run slow, 2 taps to run at a half head of steam, 1 tap of the gong, which is a little faster than to run slow.

There are two bells, one at each engine, known as the stopping-bells; if the engine is stopped, this bell starts it; if running, this bell stops it.

There are two bells, one at each engine; if they are working ahead, a ringing makes her work slow; rin'ing again would make her go full speed.

If while going ahead they wanted to back, they would ring the

240 stopping-bells first, then this one ; if stopped, they would ring this backing-bell once to back ; a change of rods holds the engines stationary ; then they ring it a second time for backing, then keep on backing till the stopping-bell rings.

I never saw the machinery of the United States catch on the center.

If the United States had been going down 16 to 18 miles an hour at the stage of Dec. 4, 1868, she could be stopped & backed up in 200 or 250 yards. The America going up could be stopped at 150 yards. The difference in speed would be 3 or 4 miles an hour ; the America was 310 to 315 feet long ; if the States were 30 yards below Summon's house at the letter R in the word river in said map, one the letter H in the word Ohio on said map ; I make the letter A there, and the America down in Warsaw bend, they would be 1½ miles apart.

The witness here marked wh're the two boats lay when sunk after collision ; the States lay ⅓ way from Rayl's house to Bryant's Creek, the America about 125 yards below the States & about 250 yards
241 above Bryant's Creek. If the down-boat was making 15 or 16 miles an hour, the slow-bell would take her ⅛ as fast as full speed.

On cross-examination the witness said :

The place I have marked with letter A for America in the bend is about the middle opposite the point. The length of the channel of the bend is about ½ to ¾ of a mile ; a boat going up from that point middle of the bend would be going towards the Indiana shore ; a boat going down from opposite Summon's would go parallel with the shore till you came opposite Bell's farm on the Kentucky shore, which is about opposite where the States was struck ; then she would go quarter towards the Kentucky shore.

Bell's barn on Kentucky shore is marked with a [*] on the map.

Boats the size of them going up or down shape the channel at that place and that stage of water ; I always do. I have run such boats a good deal, and think I understand my business. The width of
242 the channel at that stage there and *and* a little above and below was 150 to 200 yards ; and say 75 yards from shore at that stage ; boats running the channel at that stage & place would be about straightened up at 75, 80, or 100 yards from shore.

At that stage the difficulty of navigating such boats as these when running out of the channel is, that they are hard to manage ; they won't steer well, or steady well, catch swells, will suck, as we call it, & will run to the channel ; they make better time in the channel.

A boat running the channel would be out 40 or 50 yards from low-water mark at the place where the States sunk. From Warsaw up to Summon's the up-stream boat would blow one whistle part of the way, and part of the way two ; one at Warsaw, and if he expects to meet the boat before he gets straightened up, two till then ; after that one whistle, if he expects to straighten up before he meets the boat ; of course I have to determine this by my own judgment. On a boat coming down at Capt. Summon's house I would blow two whis-
243 tles, but if I should see a boat in the bend and I should blow one whistle and hear one whistle in reply, I would take the Indiana side. Each boat blowing one, there wouldn't be any danger of a collision, if the down-stream boat blow first. I have done it many a time. If we thought the up stream boat didn't blow in time, we would blow first going down. I have had them do it with me and I have done it myself. It is the place of the down-stream pilot to judge of that ; I do it when I am on watch.

In answer to a question, the witness further said as follows:

If the down-stream boat's pilot when at a distance of a mile to a mile and a half from the up-boat should be of opinion that he should have heard a whistle from the up-boat, and hearing none should blow one whistle, and should hear one whistle in reply from the up-boat, it would be prudent for him to keep on down the river at the same rate of speed he has been going until within 3 or 4 hundred yards of the up boat.

244 And the witness further said, in answer to a question, as follows:

If the up-stream boat at 1½ miles distance blew two whistles, and the pilot of the down-boat heard one only, and answered by one whistle, it would be prudent for the down-stream boat to proceed at the same rate at which she was going until within 300 yards of the up-boat.

The United States carried 2 signal-lights; a green light on the starboard, and a red light on the larboard; the America carried the same.

I never could determine by the signals-lights the distance two boats were apart; sometimes I would miss it half a mile; sometimes I would continue on because I might be wrong in my judgment of the distance, and sometimes I would blow a half a mile ahead of the distance.

There is a difference in the apparent distance on account of the atmosphere.

An Indian summer, when the air is smoky in a dark night, when the wind is blowing, when smoke is blowing, when there is a light
245 rain, or a misty rain, all these are calculated to deceive in the distance of the signal-lights, more than a black night. Sometimes a light smoke makes a little light appear further off than it is. In such a night we can't see the smoke well nor the lights.

I can ring, stop, land, and get out back again in 5 minutes. I can do my part, ring to stop & back in 10 seconds; as to the time it takes the engineer it depends on the place where the wheel or the engine's stroke is. It can be done in less that a minute if the engine is at the right point of stroke; say ½ to ¾ of a minute. The action of the engineer depends upon the man.

At a rate of 14 to 15 miles down-stream, I can stop the engines and let the boat float 100 yards, and nine or ten revolutions would stop her still. It can be done in less than that if the engineer was quick.

At a full headway, 12 or 13 revolutions would stop her still going down; can't say how many revolutions can be made in a minute; it would take say 1½ or 2 minutes to stop and back the boat under full-head steam.

I was born in Florence, in this county; have known the place
246 where the States sunk 20 years; 20 feet of water will go over this shoal bar; the regular grade was low whenever I saw it. The States lay on this shoal-bar head towards the bank, sternin very deep water, quartering $\frac{30}{100}$ of a circle.

The channel in low water would miss the stern of the States not more than 100 feet. I have run by it on stern-wheel boats. In the channel there is 10 or 15 feet in low water. The stern was in deep water at low water. The middle was in less, and the bow in still less when the water was low.

About low water it would fall about 13 or 14 feet from what it was there. I never thought the stern of the United States would get dry. I don't know how much water there was on the States. I saw that place at low water before I piloted in the line.

I was piloting in 1867 & 1869; in '67 there was 30 inches at Medoc. There was nothing to call my attention then to this place. Couldn't say whether the place at the stern was dry or in the water.

I' extreme low water we would run within 20 yards of the shore—
247 anywhere from 20 to 75 yards.

From the state of the atmosphere we sometimes fail to hear the whistles of a boat, & when it blown within the proper distance. Going up stream, where there is a strong up-stream wind, the pilot may very often fail to hear the whistle of the other boat. A side wind also will interfere, and sometimes the rattling of the windows in the pilot-house and the guy-chains will prevent hearing it. I' both boats should blow at the same time, it would interfere with hearing one whistle. It takes some little time for the sound to get from one boat to the other. This I know from watching in the day-time. The sound takes time to pass through the atmosphere. If the up-boat blows one whistle, & then in the usual time blows a second whistle, and just as 'he commences blowing a second whistle the down-boat commences to blow one whistle, the sound of the 2nd whistle of the up-boat will be heard by the down-boat, and not the sound of the first whistle. The reason is, that at the
248 time the first whistle sound reaches the down-boat the latter is sounding her whistle, which drowns the up boat first whistle, and the down-boat whistle has ceased when the up-boat reaches her. I know this from experience. After night you can't see the steam.

On re-examination, the witness said:

By the word channel, I mean the deepest and best part of the river to run . A pilot can't tell exactly where he will have to straighten up, or where he will meet another boat, but he should satisfy his own mind—use his judgment. I would stop the boat if I blew two whistles and heard only one in reply, if we were less than 800 yards apart, unless I could answer and give him the side he called for, if I could. Sometimes we are fixed so we can do it. Under the rules, the ascending boat is to blow first. If the descending boat blew first, when the up-stream boat ought to blow first, there is danger of causing a misunder-
249 standing; they are likely to blow together, and blow for different sides. If either boat blew two whistles, when the other blew one, inside of 800 yards, there is danger of collision, unless they stopped.

I have passed by the place of the wreck twice, about sundown. The shore bar, where the States lay, makes out an angle of 45°; about down along with the bank where the States lay, the middle bar will get dry when there is water *is* between and the Indiana shore. As far up as where the America lay, I am not able to state whether this bar extends up and intersects with the gravel shore bar where the United States lay. The water was up to the name of the United States, on her wheel-house, while she lay there, when I went by, the next evening after she sunk.

When persons are not running on the river they are not apt to notice the stage of water. Rattling of guys and windows has prevented me from hearing a whistle, within the last 6 months. These boats had very good whistles. The wind was blowing up stream.

250 And the plaintiff then read in evidence the depositions of George Hartly and Ann Lee Burton, taken at Madison, Indiana, Dec. 12, 1871.

Deposition of George R. Hartly and Ann Lee Burton, witnesses produced and sworn to before me, a notary public of Jefferson County, in the city of Madison, in the State of Indiana, on the 12th day of December, 1870, pursuant to the attached notice.

These depositions are taken on the part of the plaintiff in a certain action now pending in the common pleas court of Jefferson County, in

the State of Indiana, wherein Charles Alling, admr. of Otis B. Sappington, dec'd, is the plaintiff, and Thomas Sherlock, Moses Andrew, et al. are the defendants.

The said GEORGE R. HARTLY, being duly sworn to testify to the whole truth, and nothing but the truth, relating to said cause, deposes as follows:

Direct examination by plaintiff's atty.:

1st. Q. What is your name, age, residence, and occupation?

251 Ans. George R. Hartney; am 33 years of age; Covington, Kentucky; merchant.

2. Int. State what you know, if anything, of a collision on the Ohio River, on the night of the 4th of December, 1868, between the steamboats United States and America. If you were on either of said boats at the time, state whether as passenger or otherwise.

Evidence of Geo. R. Hartney.

Ans. I was on the United States on the night of December 4th, 1868, as passenger. I was standing at the middle gangway of the cabin, in company with Mr. Harrigan, second clerk of the United States, Mr. Lee Vance, Steel Bright, Mr. Sappington, Harvey Foster, and the night cabin-watchman of the boat—I don't know his name—and Mr. White, of Nashville, I think. Inside of the bar-room door was Mr. Ferwell, the bar-keeper of said boat. I was talking to Mr. Harrigan at the time, and was leaning against the middle pillow, (on the starboard side,) that supported the gangway of the upper gallery of said boat. I heard a whistle of the United States, and immediately after the bells of the starboard engine rung; first

252 the stopping bell and then the backing-bell. I knew we were in close quarters with something. I ran to the starboard side of the boat, out on the starboard guards, and ran forward, about 10 feet forward of the chimneys. Mr. Harrigan about 10 feet in advance of me when the collision occurred. I did not know what had struck us, as *as* she was struck on the larboard side, and I was not far enough forward to see the other boat. Instantly after the crash of the boat striking us, the flames ran up forward above the hurricane-roof—illuminated the whole forward part of the boat. I turned and ran back the starboard guard to the middle gangway of the cabin, through the middle gangway into the cabin, back through the cabin into the ladies' cabin. The moment I entered the cabin through the gangway, I looked back and saw the flames coming through into the clerk's office. I then ran back through the gentlemen's cabin into the ladies' cabin; spoke to Mr. Farren as he came out of his state-room; told him to go to the

253 starboard side of the boat. I then came forward to the middle part of the cabin. She was then burning about one-third of the way down the gentlemen's cabin. The smoke had reached the middle gangway of the cabin. I went out on the starboard guards through the middle gangway of the cabin, and up the starboard stairs on the hurricane-roof. I stopped on the center of the hurricane-roof, aft of the texas, to see which was the best mode for my escape. The boat was then laying with her bow up stream. I then stepped over to the larboard side of the skylight of the hurricane-roof; saw Capt. Wade taking shutters off the larboard side of the texas, throwing them overboard; heard him hollow or speak to "come and throw these shutters

into the river." The flames had then come back to the texas, about half-way of the texas. The flame appeared to be right close to Captain Wade; saw Orin Marshall, first engineer of the boat, come out of the aft door of the texas with one boot on & one in his hand: coat on his arm. I turned and looked aft; saw one of the negroes pulling at the life-boat, and hallowing for some one to help him over with it. I
254 turned and saw Mr. Marshall going down the stairs on the larboard side of the boat, in front of the wheel-house. I followed him, but did not see him after he left the hurricane-roof until I saw him on the America. I caught hold of the second guards of the cabin, on the larboard side, and swung down to the first guards of the cabin, and jumped from there to the lower guards of the America, opposite her boilers. I went aft of the America to the stern of the boat, on the lower deck. Three men were in the America's yawl. One of them says, "God damn you, don't come down here; but give us the oars." I turned and looked up where the oars ought to be. I know where they are generally kept on a boat; didn't see any; looked forward and saw the America burning on the starboard side, near the engine-room and cook-house. I then ran forward of the America's wheel-house and jumped into the river. The America was about 15 or 20 feet from shore where I jumped in. I then swam ashore.

Ques. 3. State how soon, after you heard the whistle of the
255 United States, the stopping and backing bells were rung.

Ans. Before the sound of the whistle ceased I heard the bells of the starboard engine ring. I heard the escape of steam from the valve before the whistle blew.

4. Ques. How soon after you heard the whistle of the United States and the backing-bells, did the collision occur?

Answer. From the time it took me to run to the middle gangway, to about 10 feet forward of the chimneys. The distance was about 75 or 80 feet. I started to run at the moment I heard the bells ring to back.

5. Ques. How many whistles of the United States did you hear?

Ans. I only heard one whistle.

6. Ques. State whether or not you heard any whistle or signal from the America; if so, was it before or after you heard the one from the United States; if so, what kind of a signal was it?

256 Ans. I did not hear any.

7. Ques. State whether or not you heard any signal from the United States a sho't time (within a minute or two) before the whistle that you have mentioned; if you did, state what kind of a signal it was, and about what length of time before the whistling you have mentioned.

Ans. I don't remember of hearing any.

8. Ques. State how long you had been standing at the middle gangway, at the place you have mentioned, before you heard the backing-bells?

Ans. I had been standing at that particular place about ten or fifteen minutes.

9. Ques. State whether or not you heard the whistle you have mentioned distinctly.

Ans. I did.

10. State whether or not if there had been another whistle of the United States blown within a short time before the one you have
257 mentioned you would have been likely to have heard it, and what, if anything, there was that could have prevented you from hearing it, if blown.

Ans. I had no cause to have my attention on whistles; a great many were talking—eight or nine of us. That was the only thing that would have prevented me from hearing it.

11. Ques. Was the whistle that you have mentioned a long one or a short one?

Ans. It was the ordinary signal of the meeting of a boat.

12. Ques. State whether or not you would have been likely to have heard a long distinct whistle, if blown, a short time before the one you have mentioned.

Ans. I think I would.

13. Ques. State whether your hearing is good or not.

Ans. It is good.

14. Q. What was your business previous to that collision; what experience had you, if any, in steamboating; how did you acquire it—whether by traveling, or by occupation on the rivers, or by both; and what, if any, experience or knowledge did you have with reference to fires?

258

Ans. Two years previous to my present business I was in the quartermaster's department at Jeffersonville, as superintend' part of the time, and as assistant superintendent of the same department. I was on the Champion, No. 2, a while in 1854. I think that was the year; I am not certain. I was occupied on the boat part of the time as striker, and part of the time in the refreshment saloon. It was a picnic and tow-boat. I became familiar with the bells and *and* general signals of the boat. I have traveled a great deal up and down the river as passenger, and spent the best part of my time in the pilot-house and the engine-room of the boat. We had a fire department at Jeffersonville for the quartermaster department's protection. I was superintend*a*nt and assistant superintend*a*nt of the fire department while on duty there. I have a great deal of experience in fires; had a great many fires there. I have been more or less connected with fire departments since I was 18 years of age.

259

15. Ques. You have mentioned Mr. Sappington, as standing near the middle gangway; state whether it was Otis B. Sappington; and if it was, state where he went when you started to run, and where you last saw him on that night, if you know.

Ans. It was Mr. Sappington, of the late firm of Hargan & Sappington, of Madison, Indiana; did not know his first name. Did not see where Mr. Sappington went. Did not see him after I heard the signals.

16. Ques. State whether or not you know Cap. Richard M. Wade, captain of the United States; whether you saw him that night before the collision; if you did, state how long before, where it was, and what he was doing.

Ans. I knew him; do yet. I saw him before the collision, about 10 minutes before, coming from the aft end of the boat through the cabin; he stopped at the middle gangway of the cabin, and spoke to the crowd, saying, "Gentlemen, you must not have any more chivareing (or words to that effect) to-night, as it is late; you disturb the other passengers of the boat." He then passed out of the gangway towards the starboard guards, as if going on the hurricane-roof. I don't know where he went. The next place I saw him was on the hurricane-roof, after the collision, on the starboard side of the boat, about midway of the texas.

260

17. Ques. State what kind of a night it was, if you know, and whether or not you saw the shore when you first went out on the guards immediately before the collision.

Answer. It was a dark, stormy night—raining. Don't know if raining just then, but was before and just after the collision. I did not see the shore until after the collision, as it was very dark. I saw the shore after the collision by the light from the burning boat.

261 18. Ques. State what effect, if any, the collision had upon the course and momentum of the United States, and whether or not it turned her; if it did, in what direction?

Answer. It stopped her and turned her, swinging her around with her stern down stream, her stern out and her bow in towards the Indiana shore, throwing her nearly parallel with the Indiana shore.

19. Ques. State whether or not you heard the engines working when you went back into the cabin, and, if you did, state how.

Ans. I heard the engine or engines working as I went back into the cabin. I can't tell whether they were backing or going forward.

20. Ques. State whether you first saw the America, after the collision, and where; how she was lying with reference to the United States.

Ans. The first I saw of the America she was lying with her bow
262 into shore. I saw her from the hurricane-roof of the United States. The America's bow was lying 50 or 60 feet forward of the United States' bow, and also her stern about 10 or 15 feet from the States. The America was lying angling from the United States towards the Indiana shore. She then backed down parallel with the United States, and kept backing until she backed some 200 or 300 yards below her. She beached there.

21. Ques. Now, state whether the United States had sunk andgrounded at the time you first saw the America.

Ans. I can't tell; from the hurricane-roof it was hard to tell where the hull laid; as soon as I jumpped on the America I know the United States had sunk, and may have settled more after that. I know she settled more after I first looked at her. He' guards were down to the water's edge when I jumped.

22. Ques. State whether or not the United States got nearer the shore after you went on the hurricane-roof.

263 I don't think she did. I don't think she changed her position after she went on the hurricane-roof.

23. Ques. How long did the United States continue to burn after you got on the America, before the cabin fell in?

Ans. From the time I got on the America and to the shore it was some five minutes before the forward part of the cabin fell, and some ten minutes after before the aft part of the cabin fell.

24. Ques. State whether or not the wind was blowing at the time you went on the hurricane-roof—what direction and with what force.

Ans. The wind was blowing very near up stream from the west. Did not feel the force of the wind, as I was paying no attention to it. The wind was blowing a stiff breeze when I got on shore.

Cross-examination.

264 1. X-ques. What was the stage of the water; was it high or low?

Ans. I don't know. My impression is that it was a good stage of water.

2. X-ques. You say that the engines, or one engine, kept in motion, but you did not know whether it was backing or going forward. Could you not tell from the motion of the engine and the wheel whether it had been reversed or not, and whether it was backing or going forward?

Ans. I could not see the engines or wheels, but, at the time I heard the alarm-bells, I heard the engineer reversing the cams of his engine. I am satisfied, from the jar at the time, that she was backing on the starboard wheel.

3. X-ques. Where was you when you first saw the shore by the light of the burning boat?

Ans. As soon as she struck us, I was about 10 feet forward of
265 the chimneys, on the cabin guards, on the starboard side.

4. X int. How far was you then from the shore, in your judgment and opinion?

Ans. It was close to the Indiana shore. It was impossible for me to tell how far it was.

5. X. How long a space of time did you occupy in running up the cabin guards back into the ladies' cabin, on to the hurricane-deck, and getting down to the America?

Ans. Impossible for me to tell the exact time; but as near as I can tell from 5 to 7 minutes.

6. X-int. Do you think it took you so long as 5 minutes?

Ans. I think it did.

7. X-int. Was Mr. Sappington standing on the gangway or in the cabin, at the time of the collision, or did you see him at the instant of the collision?

266 Ans. Did not see Mr. Sappington at the time of the collision at all, as I was about 10 feet forward of the chimneys on the starboard guards at the time of the collision.

8. X-int. Where did you leave Mr. Sappington when you started to run forward?

Ans. Impossible to say, as he was standing in the crowd, and my attention was called to the signals, and not to Mr. Sappington's whereabouts. He was standing in or about the gangway of the center of the cabin some half an hour before the collision, and was there when I started to run forward. Do not know his exact position.

9. X-int. Was there anything said about the signals indicating danger before you started to run forward?

Ans. Not by any one, that I heard. I made the remark, "What's the matter?"

10. X-int. You say that the collision occurred when you were
267 about 10 feet forward of the chimneys? How soon did you see the fire after that?

Ans. Before the crash was over of the collision the flash shot up; like a gun, when the hammer fell, the gun went off. I mean it was instantaneous.

11. X-int. What did you do then; did you turn immediately and run back, or not?

Ans. I did.

12. X-int. Did you see Sappington, Bright, or Vance when you got into the cabin?

Ans. Not after the collision.

13. X-int. If they had *of* been forward from the place that you left them to the front door of the gentlemen's cabin, could they have got back, or would they have been enveloped in the flames?

Ans. They had as much time as I had to go forward, and back to the center of the cabin, before the flames got through the office.

268 14. X-int. What was the distance from the chimneys to the front door of the gentlemen's cabin?

Ans. I should judge near about thirty feet.

15. X-int. Did you leave them standing in the gangway when you started to run? if not, where were they?

Ans. They were there when I heard the signals. I paid no attention to them afterwards.

16. X-int. When was your attention first called to the matter of signals?

Ans. When I heard the stopping-bell of the starboard engine. Hearing the stopping-bell called my attention to the whistle that had previously blown.

17. X-int. If the bells had not rung would your attention have been called to the whistle?

Ans. Not particularly to that whistle any more than to any other.

269 18. X-int. Might there not have been previous whistles by both of the boats, and you not have noticed them?

Ans. Yes.

19. X-int. Had the America commenced to back down, or not, before you got on her?

Ans. She had.

20. X-int. Do you know whether or not you were the last person that got on to the America from the States?

Ans. I do not.

21. X-int. You say that the bow of the America was towards the shore; was it against the shore or not?

Ans. I judged it was, from where I was standing on the hurricane-roof on the States.

22. X-int. You state that the stern of the America was quartering out into the river; was the stern at right angles with the shore or not?

Ans. It was not.

270 23. X-int. How much did it vary from being at right angles?

Ans. I don't suppose it was a quarter of a right angle.

24. X-int. What was the distance of the States from the stern of the America, as near as you can judge?

Ans. From 15 to 20 feet.

Plaintiff asked the following direct questions, which was omitted (by deft's. counsel's consent.)

1. Ques. You have stated that when you came into the cabin immediately after the collision, you looked forward to the ticket-office; will you now state whether or not the ticket-office had been carried or torn away by the force of the collision?

Ans. It had not, as I could see.

GEORGE R. HARTLEY.

271 Not having time to complete the taking of these depositions to-day, an adjournment is taken until to-morrow, the 13th of December, 1870.

Witness my hand this 12th day of December, 1870.

JEROME F. MULLIN,
Notary Public, Jefferson Co.

Office of Harrington & Korbly, 13th of December, 1870. The further taking of these depositions is resumed as per adjournment of yesterday morning, 12th December, 1870.

JEROME F. MULLIN,
Notary Public, Jefferson Co.

Evidence of Ann Lee Burton.

ANN LEE BURTON, of lawful age, being produced, and by me being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the above cause, deposes as follows:

Direct examination:

1. Int. State your name, age, residence, and occupation.

272 Ans. Ann Lee Burton. My age is 47 years. I reside in Cincinnati, Ohio. My occupation was formerly school-teacher; am now sewing. I was chamber-maid on the river for several years.

2d int. State whether or not you were on the steamboat United States on the night of the 4th of December, 1868, at the time of her collision with the America. If you were, state whether you were a passenger or were employed on the boat—in what capacity?

Ans. I was on the United States. I went on her on Monday, and the Friday night following was the disaster. I was employed on the boat as chamber-maid. I was not the regular chamber-maid, but was employed often at times.

3. Int. State for what length of time you were employed by the Cincinnati and Louisville Mail Co. previous to that disaster.

273 Ans. It was about the first of May, the same year that I was first employed by the company. I was first employed on one boat and then on another, on the Lytle and all the mail-boats in that line, off and on, until December, following.

4. Ques. What time of night did the collision take place?

Ans. Between twelve and one.

5. Ques. State whether you wer' up and dressed at the time, or had retired.

Ans. I was up and dressed; had not retired. I did not retire early; always set up late.

6. Ques. At the time the collision took place, when the boats struck, what part of *of* the boat were you?

Ans. I was standing back of the piano, near the door that leads out to the guards, leaning against one of the posts in the ladies' cabin, looking forward to the ticket-office.

7. Ques. State who, if any one, was in the cabin at the time the collision took place.

274 Ans. Saw some persons, but don't know who it was, in the forward part of the cabin.

8. Ques. What took place in the ladies' cabin after the boats struck? State whether any person came into the ladies' cabin, and who they were and where they came from.

Ans. I gave the first alarm; the first one I saw coming towards me was the porter, Henry Brown, and then the next person I saw was the head clerk, Mr. Riley, and then everybody came out of their rooms into the cabin. I screamed and brought some out. I couldn't tell who they were; they came out, some of them half dressed, and in nearly every shape; I could not tell.

9. Int. State what you did, if anything, after the collision, in reference to arousing the passengers in the state-rooms, and where you went.

275 Ans. After the collision I hollowed fire, murder, and everything else. I ran out on the guards, and then turned and came back and went up stairs on the gallery. A little boy of Mrs. Pearce's caught me in the confusion, and held on to me; and don't know whether

he went over with me when I jumped, or not; he was saved, and next morning told me he swam ashore.

10. Int. State whether or not you saw any other of the officers of the boat in the ladies' cabin after the collision, after you returned to the cabin from the guards; and if you did, who were they and where did they come from?

Ans. I saw only the first and third clerk. The captain is the first I saw at the time of the collision; he jumped up from somewhere and tore ahead; did not stop for nothing; the next was the colored porter; the next was Riley, and when I returned from the guards I saw the third clerk. They were all I knew; I did not know the rest; they were passengers.

11. Int. From what part of the cabin did you see Captain Wade come?

276 Ans. From the back part of the ladies' cabin, room No. 33; that is where he started from.

12. X. Ques. In what direction did he go?

Ans. He went forward.

13. Ques. How soon after the boats struck did you see Captain Wade come out of room No. 33?

Ans. Right away, forthwith.

14. Ques. How near were you standing to room No. 33?

Ans. I was right opposite, near the room 37 and 38; he was on the right-hand side of me, and I was on the left hand-side; at that time the boat had turned around.

15. Ques. Had you seen Captain Wade in the ladies' cabin before that, before the boats struck? If you had, what was he doing and wh're did he go?

277 Ans. He was in the cabin two or three times, passing through; he had usually been in the habit of doing that, and the last I spoke to him he came to me and told me to make those persons, those three that were lost—I can't remember their names, except Mr. Bright—to stop making a noise.

16. Ques. Where did Captain Wade go, if you know, after telling you to have those gentlemen stop making a noise?

Ans. I think he went on the guards right opposite me. I lost sight of him very quick, I know—guards of the ladies' cabin I think he went.

17. Ques. State who occupied room No. 33 on the United States that night, if you know.

Ans. Mrs. Pearce occupied it.

18. Ques. What Mrs. Pearce?

Ans. Mrs. Pearce, of Louisville.

19. Ques. State if you saw any one else come out of that room that night after Captain Wade came out?

278 Ans. I saw no one but her; she came out during the fright. I mean Mrs. Pearce.

20. Ques. What was the condition of Mrs. Pearce that night?

Ans. She came out about half dressed, like anybody would in a case of that kind.

23. Ques. State what happened to the boat after the collision.

Ans. Caught fire and burnt, and I saw the fire flash and persons running in every direction, and screaming and jumping for their lives.

24. Ques. State how soon after the boats struck you saw the fire, and what part of the boat.

Ans. Seemed to be all at once; in the front part of the boat.

25. Ques. State how quickly the flames spread, if you know.

279 Just as fast as it could. Shavings could not burn faster.

26. Ques. After you left the cabin the second time to escape, where did you go, and how did you make your escape?

Ans. I went up stairs on the second floor, on the inside; then I went out on the guards above, and then jumped off on to the America's bow as she swinging towards us.

27. Ques. State what you did then, if you know, and what happened to you.

Ans. I did not know anything—I was knocked dead—until I found myself lying upon the bank of the river on ice and snow, and it raining on me; after that I was taken to the barge, and from there to Florence.

28. When you jumped off the United States on to the America, how far had the fire advanced on the United States?

Ans. The boat looked like the whole of it was on fire, to me.

280 29. Ques. State whether your saw any of the passengers that were from Madison, on the guards before you jumped off the United States.

Ans. I did not see any from Madison that I knew except Mrs. Inskip. I saw her in the cabin, going out the cabin-door on to the guards.

30. Ques. What kind of a night was it, if you know?

Ans. It was a very bad night; it was snowing, raining, sleeting, and very dark night.

31. Ques. State if you how many passengers there were on the States that night, and how many ladies, if you know.

Ans. I should suppose there was a 100 passengers on board that night. There was 16 ladies and 3 children on the boat. I counted them at the supper-table.

281 32. State, if you know, how many of the ladies that were on board of the United States that night escaped, and who they were?

Ans. Mrs. Inskip, Mrs. Farran, and Mrs. Teigler were the only ones that I knew got off.

Cross-examination:

1. X. You live in Cincinnati, do you?

Ans. I do.

2. X. Did you come here to give your deposition in this case?

Ans. Yes, it seems so; nothing else brought me here.

3. X. Had you ever been chamber-maid on the United States before that night?

Ans. Yes, sir; twice or three times before that trip; once two weeks, and another time a week; then again 1 trip—this last.

4. X. Who was captain of the boat at those times?

282 Ans. The first time Captain Carter; the second time Captain Carter; third time, and the last time was Captain Wade.

5. X. You say you were standing leaning against a post in the back part of the ladies' cabin, and looking forward at the time of the collision. State whether or not you saw the flames burst up in front while standing there.

Ans. I did; it was instantly; when the collision took place, it was all at once.

6. X. What did you do then?

Ans. I ran around and awoke some of the passengers; knocked at some of the doors—made noise enough, so that some that was awaked told me.

7. X-int. Who first came out of a room in the ladies' cabin?

Ans. Captain Wade was the first person I saw.

8. X-int. How was Captain Wade dressed?

Ans. He was dressed up; had his clothes on; looked like he always looked to me.

283 9. X-int. Had he an overcoat on or not?

Ans. I don't remember; he had a coat on; don't know whether it was an overcoat or not.

10. X-int. What color was his coat?

Ans. It was a dark color, dark brown or black; something like that. I never took notice of that.

11. X-int. Had you been acquainted with Captain Wade before you went on the boat?

Ans. No, sir.

12. X-int. You say in your examination-in-chief that he came out of room 33; did you see him come out?

Ans. Yes, I saw him run out of there.

13. X-int. Did he leave the door open, or shut it?

Ans. I don't know.

13. X-int. How long after that you raised the alarm?

284 Ans. It was done all at one time; when I run around hadn't time to consider anything; he came out as the boats collided, and he either passed me or I passed him.

15. X-int. Where did he go?

Ans. He run forward. I don't where he went to.

16. X-int. How far forward did you see him go?

Ans. Well, I lost sight of him about midway of the whole cabin; so much confusion and fright; I did not pay attention.

17. X-int. How long after Captain Wade came out of 33 until Mrs. Pearce came out?

Ans. It was not more than two minutes or a minute; everybody was out together.

18. X-ques. W'o occupied room 33 besides Mrs. Pearce?

285 Ans. No one as I know of.

19. X-int. Did not her little boy occupy it?

Ans. No; she told me she was going to put the boys in the next berth; that's what she said; don't know only what Mrs. Pearce told me; did not go to see.

20. X. Where was No. 33 in the ladies cabin? was it in the upper or lower cabin?

Ans. It was in the lower cabin, first cabin.

21. X. Where was the passway from the upper to the lower cabin?

Ans. Was on the back end of the boat; was a stairway on each side that passed up.

22. X. How long had you been standing at the post before the collision?

Ans. A minute or two.

23. X. Where had you been before that for ten or fifteen minutes?

Ans. Had been on the guards; passed from one door to the 286 other & back to the guards.

24. Had you been close about there all the time for ten or fifteen minutes?

Ans. I had.

ANN LEE BURTON.

STATE OF INDIANA,
County of Jefferson, ss:

I, Jerome F. Mullin, a notary public within and for said county, hereby certify that the above-named George R. Hartney and Ann Lee Burton

were by me first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth relating to said cause hereinafter named; that their depositions were all written by me in their presence; that the said deponents subscribed their respective depositions after the same had been carefully read over to them by me; that the adverse parties were present by their attorneys, Messrs. Walker &
287 Roberts; that all of said depositions where taken at the office of Harrington & Korbly, on Main cross street, in the city of Madison, Indiana, on the 12th & 13th days of December, 1870, between the hours of 9 o'clock a. m. and 5 o'clock p. m. of each day, agreeably in all respects to the annexed notice. Said depositions were taken on behalf of plaintiff in a cause now pending in the common pleas court of Jefferson County, Indiana, wherein Charles Alling, administrator of *the* Otis B. Sappington, dec., is plaintiff, and Thomas Sherlock et al. are defendants.

In witness whereof I hereunto subscribe my name and affix my notarial seal, this 13th day of December, 1870.

[SEAL.] JEROME F. MULLIN,
Notary Public, Jeff. Co., Ind.

Evidence of Wm. Turpin.

The plaintiffs then called WILLIAM TURPIN, who testified:

I live in Madison, Indiana. Man S. Turpin is my brother; 21
288 years old. He run on the river 5 or 6 months before 1868. He lives in Jefferson Co. He was steersman prior to Dec., 1868.

The watchman on the lower deck of the States had charge of the reflector; it was kept on the lower deck, I think in front of the engines.

It was now admitted in open court, by the defendants, that they were the owners of the steamboats United States and America, and engaged in navigating them on Dec. 4, 1868, at the time of collision, and the admission stated to the jury.

The plaintiff then read the deposition of N. B. Jenkins, taken at Louisville, Nov., 1870.

Jefferson common pleas court, Indiana.

CHARLES ALLING, ADMR.,
vs.
THOMAS SHERLOCK. } Depositions.

This day appeared before me, a notary public for the county of
289 Jefferson, State of Kentucky, the plaintiff, by counsel, and the defendants, by counsel, and the notice hereunto attached was given me, it being a notice to take depositions in behalf of the plaintiff in the above cause, at the office of Muir & Bijur, in the city of Louisville; and by agreement of parties the taking of said depositions is postponed until Friday, November 11th, 1870.

Wherefore I have adjourned and postponed the said examination until that day, this 10th of November, 1870.

GEO. M. DAVIS,
Notary Public, Jefferson County, Ky.

NOVEMBER 11TH, 1870.

At the time to which the parties agreed to continue the taking of depositions in the above-entitled cause, the parties appeared, and there-

upon the plaintiff produced Napoleon Jenkins, a witness, of lawful age; who, being first sworn by me to testify the truth, the whole truth,
290 and nothing but the truth in the said cause, now pending in the common pleas court of Jefferson County, wherein said Charles Alling, admr. of Otis B. Sappington, decd., is plaintiff, and Thomas Sherlock and other' are defendants, was thereupon examined, and deposed as follows, to wit:

Evidence of N. B. Jenkins.

N. B. Jenkins' deposition.

First question by plaintiff. What is your name, age, residence, occupation? State how long you have been engaged in your occupation.

Ans. My name is Napoleon Jenkins; age, 37 years; reside in Louisville, Kentucky; I am a steamboat pilot; I have been a pilot for 17 or 18 years.

2. Ques. State whether you were ever in the employ, as pilot, of the Louisville & Cincinnati Mail-Boat Company. If you were, for what length of time?

291 Ans. I was in their employ for about fourteen years.

3. Ques. State what boat, if any, you was pilot on in the early part of December, 1868.

Ans. I was pilot on the America.

4. Ques. State what, if anything, you know about a collision between the defendants' steamboat' United States and America, near Warsaw, Kentucky, on the Ohio River, on the night of the 4th of December, 1868.

Ans. I know they had a collision there on that night.

5. Ques. On which boat was you at the time of the collision?

Ans. I was on the America: was pilot on that boat at the time.

6. Ques. State what direction the America was going that night and what kind of a night it was, about the time of the night that the collision took place, and whether you were on duty at the wheel at the time.

292 Ans. It was going up the river. It was a dark night the forepart of the night, up to ten o'clock. About ten o'clock the moon rose, and then it was what I would call a gray night. It was cloudy, and the clouds covered the moon. There was a mist of snow or rain; I do not know which. It was cold enough to snow. The collision took place about 10 o'clock—a few minutes latter, I think. I was on duty at the wheel at the time.

7. Ques. State when you first observed the United States approaching that night, how far she was off, in your judgment.

Ans. It was, I thought, about three miles. I suppose it was about that distance.

8. Ques. At what speed was the America going at the time you saw the United States on that night?

Ans. I suppose she was going about twelve miles an hour.

9. Ques. What was the stage of the river at that time?

293 Ans. It was about seventeen feet in the channel.

10. Ques. State who, if anybody, was in the pilot-house with you at the time you first saw the United States on that night.

Ans. Captain David Whitten was in there with me, and Edmund Turpin, a young man who is the steersman. There was no one else in there with me.

11. Ques. State whether you said anything to Captain Whitten upon first seeing the United States, and what was it?

(Objected to by defendant's counsel as incompetent.)

Ans. I said to Captain Whitten, "Yonder comes Uncle Dick now," meaning Captain Wade of the United States, who was known by that name.

12. Ques. What reply, if any, did Captain Whitten make?

(Objected to by defendant's counsel as incompetent.)

294 Ans. I do not recollect of his making any reply.

13. Ques. Which boat gave the first signal with the steam-whistle?

Ans. I thought I blew first. I still think so. I did not hear any whistle before I blew mine from the United States.

14. Ques. How long after you first saw the United States was it before you blew your signal?

Ans. That is very hard to tell. A man cannot guess the time exactly when he is busily engaged. Not expecting anything, one would not notice the time.

15. Ques. We do not ask the exact time, but state to the best of your recollection how long it was.

Ans. It may have been three minutes—two minutes and a half or three minutes.

16. Ques. Was you paying close attention to the United States from the time you first saw her up to the time that you gave your first

295 signal, and had you hold of the wheel yourself?

Ans. I was paying the closest attention to her, and had hold of the wheel myself from the time I first saw her to the time we struck. I had hold of the wheel when we struck.

17. Ques. State how far off the United States was, if you know or have any judgment upon it, at the time you blew your first whistle.

Ans. I supposed her a mile, but that was a deceiving night. She may have been that far and she may have been farther.

18. What is your present judgment about it?

Ans. My present judgment is about the same as it was then. I am of same opinion now as then.

19. Ques. What signal did you blow, and what was the meaning of the signal? Did you blow the signal distinctly or not?

296 Ans. I blew two whistles; that meant to take the left-hand side. It is known to steamboatmen as the larboard side. I blew two long, distinct whistles.

20. Ques. About what space of time intervened between the whistles you blew?

Ans. I suppose about three seconds.

21. Ques. State whether the first whistle had time to die away before you blew the second one.

Ans. Yes; the sound had time to die away before I blew the second one.

22. Ques. What did the United States do after you blew your first whistle?

Ans. She came on down the river, as near as I can tell, just where I wanted her to come.

23. Ques. What did you do with reference to steering the boat upon blowing your first signal, if you did anything; and if you changed the course of your boat, which side of the river did you take?

Ans. I held her for the Indiana side all the time after I blew

297 my first whistle. My boat was just where I wanted her to be when I blew my whistle, and very little change of course was necessary. I held a little toward the Indiana shore, but still kept on in the same direction.

24. Ques. How near to the Indiana side were you at the time you blew your first signal, and how *much* that shore did you go before the collision?

Ans. That is to be guessed at. I suppose I was not more than 100 yards from the shore when I blew my first whistle. We were about 75 yards when we struck; it may be closer.

25. Ques. How wide was the river at the place of collision at the time it occurred? I mean how wide for the purpose of navigating?

Ans. For purposes of navigating I suppose it was 400 yards wide; the river itself I suppose was about 600 yards wide there at the time.

26. Ques. How long was it after you blew your first signal before you heard any signal in answer from the United States?

298 Ans. I suppose it was about one minute; it may have been a little longer, or not so long.

27. Ques. What was the signal you heard from the United States, and what did it mean?

Ans. The signal I heard from the United States was one whistle, which meant that that boat wanted to take the same side that I was taking.

28. Ques. At the time that you blew your first signal, where with reference to the center of the river, if you know, was the United States, and how was she holding—straight down stream, or towards the Kentucky or Indiana shore?

Ans. She looked to be about one-third of the way across the river from the Indiana shore it may be a little further, and in the channel, *and in the channel.* She then looked to me like she was holding straight down the river. I could not tell, as I was in front of her at the time.

299 29. Ques. How was the United States situated at the time you blew your first whistle—to the left, right, or front of you?

Ans. She was to the right of me, above me about a mile up the river; that means she was further out from the Indiana shore than I was.

30. Ques. At the time you heard the first signal of the United States in answer to your first signal, how far the two boats apart?

Answer. I can't answer that very well; I suppose they were four hundred or five hundred yards. That signal was in answer to my second signals. I am not certain that I heard any answer from the United States to my first signal; the signal that I did hear from the United States with certainty was in answer to my second two whistles.

31. Ques. Why are you not certain that you heard any answer from the United States to your first signals?

Ans. The only reason I can give is that there was noise there; the wind was blowing up the river very strong, and I was not certain

300 that I heard any whistle.

32. Ques. State whether you had any doubt at the time about hearing any answer to your first signal, and what if anything you said to Captain Whitten, who was in the pilot-house with you, about it.

(Objected to by defendant's counsel as incompetent.)

Ans. I had no doubt of hearing any whistle, and I said nothing to Whitten and he said nothing to me. I did not think at the time that I heard any whistle.

Adjourned by agreement of parties until Saturday, November 12th, 1870.

GEO. M. DAVIE,
Notary Public, Jefferson Co., Ky.

SATURDAY MORNING, *November 12th*, 1870.

Parties met according to adjournment, and the examination of Napoleon Jenkins was continued.

Quest. 33. (By plaintiff's attorney.)—Why do you say you were
301 not certain you heard an answer to your first signal if you had no doubt at the time that you heard none?

Ans. I did not think that I heard any whistle, but yet I thought it had blown a whistle. I thought he had answered me with two whistles from the way the boat was holding. I had given a short time to get an answer, no longer, but about the same time that I gave another boat to answer signals. There was no danger, so far as I could see at that time, yet I thought he had answered me correctly from the way he was holding his boat.

34. Ques. What caused you to think a second signal necessary; was there any change in the course of the United States?

Ans. There was no change in the course of the United States, but it was usual and customary to get answers to signals; I had waited a short time to get an answer, and then I blew two more whistles, as I had not fully understood that he had answered me, though I thought he had answered me. [The reason why I thought he answered me was because he held his boat in a shape that made me think he was
302 going to take the outside, the Kentucky side of me; I thought he was going to take that side.]

(The part in brackets objected to by defendants' counsel.)

35. Ques. How far apart were the boats when you blew the second whistle?

Ans. I think they were between 400 and 500 yards; that night was a very deceiving night. It might have been further off or it might not have been so far.

36. Ques. How did you know it was a deceiving night in regard to judging distances; also state how it was "deceiving," and what made it deceiving?

Ans. It was a heavy, misty night—what we call a gray night. [There was a mist between you and a light, that might make it look closer to you or further off than it really was; sometimes there are nights that are very deceiving, and that was one of those nights, although I thought there was no danger whatever.

303 37. Ques. How soon after you blew your second signal did you get an answer from the United States? State what answer she blew, and what it meant.

Ans. I got it right immediately, so soon as I got through blowing my two whistles. She blew one whistle, which meant that she was going to take the same side that I was going to take; that is, the Indiana side.

38. Ques. State whether or not the United States, at the time of or immediately after the blowing of her one whistle, in answer to your second signal, made any change in her course. If he did, state what change, and describe it.

(Question objected to by the defendants' counsel as leading.)

Ans. Yes; she made a change, as I thought, just as she blew her whistle. She came in an angular direction toward me and the Indiana shore.

39. Ques. If the United States, at the time of blowing her one whistle that you have just spoken of had kept on in the direction that she
304 was going, would the boats, in your judgment, have collided?

(Objected to by defendants' counsel.)

Ans. Just at the time she blew her whistle, and it may have been a

little before or after, she made her turn in an angular direction at the time that I blew my two last whistles; if she had kept on in the same course she was going, I do not think, in my judgment, they would have come together.

40. Ques. How much of an angle did her change of direction make from the line that she was going before she changed; was it quartering or otherwise across the river?

(Objected to by defendants' counsel.)

Ans. That is a very hard question to answer. It may have been one *one* quarter of her way around in the river, or it may have been more or may have been less. At any rate it looked to me that she was heading for me, and that was what made me think there was danger.

41. Ques. What, if anything, was said by you and Captain Whit-
305 ten to each other at the time the United States blew her signal and changed her direction?

(Objected to by defendants.)

Ans. [At that time I said "Great God, what does that man mean?" that means the pilot on the United States.] I did not know who that pilot was. I had heard who he was at the time I was speaking. I stopped my boat, and rang the bells to back her, and she did back instantly. [Cap. Whitten arose from his seat where he sat in the back part of the pilot-house on a bench; he came forward to the pilot-wheel in the pilot-house of the America, and hollowed to the United States, "Where the hell are you going; and why the hell don't you stop that boat?"] (Part in brackets objected to by defendant's counsel.)

42. Ques. Did you hear any answer from the United States to what Captain Whitten said?

(Objected to by defendants.)

Ans. I heard none.

43. Ques. Did Captain Whitten get up off the bench before or after the United States blew her whistle?

306 Ans. He got up after the United States blew her last whistle.

44. Question. How soon after?

Ans. It was a second or two seconds. Time cannot be measured when a man is in a tight place.

45. Question. How soon, after the United States answered your second whistle, did the boats collide?

Ans. That is a hard question to answer. It may have been a minute and a quarter or a minute and a half, or it may not have been so long, or it may have been longer.

46. Question. How soon did the boats collide after Captain Whitten called out to the United States "Where are you going with that boat?"

(Objected to by defendants)

Ans. That is time to be guessed at. It may have been a half a minute, or it may not have been so long, or it may have been longer.

47. Ques. Describe how the boats collided. That is, explain
307 the manner in which they struck each other.

Ans. The America struck the States with the America's bow on the larboard side of the States as near as I could tell about 40 or 50 inches from the States' stem; that is, from her bow. It was about 40 inches, more or less. The America run across towards the starboard side of the States about 17 or 18 feet, more or less. I never measured it. I mean by this that she struck on the larboard side of the States and cut into the States about 17 or 18 feet.

48. Question. What effect did the collision have upon the direction the United States was going? State whether it turned her bow; if so.

which way, and whether she moved to or from the Indiana shore; als describe the course the America took after the collision, and how th boats lay with reference to the Indiana shore.

Ans. The collision, of course, when my boat struck her, headed her more up the river—turned her around. It turned the bow of the
308 United States up the river. She moved toward the Indiana shore. I backed the America back about 50 yards from the United States below her. I then saw the America was afire, and I came ahead and run her inside of the United States right in against the bank on the Indiana shore.

49. Ques. When you ran the America in between the United States and the Indiana shore, how close where the two boats together, what direction were they lying, and how near were they to the Indiana shore?

Ans. They were very close together, were lying side by side, with both their heads up steam. The America's bow was against the Indiana bank, and she was lying alongside of the bank.

50. Ques. At that time how near was the United States to the Indiana bank?

Answer. I suppose it was 50 yards; it may be more or less.

51. Ques. How wide was the America?

309 Ans. I suppose she was 80 feet, more or less.

52. Ques. How near was the bow of the United States to the bow of the America at the time the America was lying alongside of the bank, as you have stated?

Ans. That is a hard question to answer. The were close together, but I am not able to say. It may have be'n 15 feet apart, or it may have been more, or it may have been less.

53. Ques. Did the United States get any nearer the Indiana shore after that time?

(Objected to by defendants as leading.)

Ans. I don't think she did.

54. Ques. What else happened to the United States, if anything, at the time of the collision?

Ans. She took fire at the time of the collision,

55. Question. State how far the fire had progressed on the United States at the time the America lay up against the Indiana bank, as you have just stated.

Ans. She was afire outside as far as I could see forward of the pilot-house to the bow.

310 56. Question. How long after that did she continue to burn?

Ans. She burned all night down in the coals. She was smoking the next morning.

57. Ques. How lond did she burn after the America got against the Indiana bank, before her cabin fell in?

Ans. That is a hard question to answer. Before her cabin all fell in, it may have been fifteen minutes, or it may have been less, or it may have been more. A steamboat-cabin burns very quick.

58. Ques. While the America was lying against the Indiana bank and the United States was lying alongside of her, state whether you saw any person getting from off the United States on to the America, and how they got on, if any did.

Ans. No, I did not see any at that time.

59. Ques. Describe what the boats or either of them did after you run the America up against the Indiana bank.

311 Ans. The States did nothing that I know of. The America was backed out and landed below about a hundred yards, may be more or less.

60. Ques. How lond did you remain in the pilot-house after the collision, and where did you get off the America on the Indiana shore?

Ans. I may have been in there five minutes, or may be more or less. I got off the America right forward of her larboard wheel on the Indiana side of the river, stepped in the America's yawl—in the stern of the yawl; it was pulled up—the bow of the yawl—on the bank.

61. Ques. Was that at the place where the America first landed or at the place where she landed the second time, about one hundred yards below?

Ans. It was at the place where she landed the second time, about a hundred yards below.

62. Question. Who steered the America from her first landing to her second?

Ans. Charles Ditman.

312 63. State whether you left the pilot-house about the time of backing, and how you came to leave it; whether Detman was in it at the time you left or came in it afterwards?

Ans. I left the pilot-house before she was backed out. I left the pilot-house after I had landed her, because the boat was on fire. I had landed her on that account. Detman was not in the pilot-house at the time I left it. I met him on the hurricane-roof after I had gone down from the texas. [Mr. Detman say' to me, "You had better back this boat out from here, or that boat will burn us up."] I says to him, "Charley, I have landed this boat; she is all afire." I went into the texas then to see if there was any one in there who had not gotten up. I picked up my valise which was sitting in my room. I got down on the first cabin floor when I heard the bells ringing, the engine bells, as I thought, to back her out. I went on down on the outside guards of the lower cabin, and started forward on that guard to go to the bow to get off,

313 but I met the fire coming down that guard, which was on the Indiana side of the America, so I turned around, and came back on the same guard. I then went down through the kitchen or store-house, and then I got down on the lower guards, and in a few minutes got out in the yawl, and came on to the shore.

(The counsel for the defendants objected to so much of this answer as is contained in the brackets above.)

64. Ques. When the boats collided, where they between the Indiana shore and low-water mark on the Indiana side, or between low-water mark on that side and the Kentucky shore?

Ans. That is a hard question to answer. The distance is very hard to get at. We were very close to low-water mark, and I was with the America very close to low-water mark. My opinion was that I was on the inside of low-water mark; but it may not have been; it was only my judgment. I speak of low-water mark on the Indiana side.

314 65. Question. When you say that the America was, in your opinion, inside the low-water mark, do you mean to say that she was between low-water mark on the Indiana side and the Indiana shore or not?

Ans. According to my judgment, I think she was; she may not have been.

66. Question. Statee whether or not the United States sunk after the collision.

Ans. Of course, she sunk.

67. Question. When the United States sunk, was she above or below the low-water mark on the Indiana side?

Answer. Well, that is a question. I was not on the United States.

She, according to my judgment, was near the line of the low-water mark on the Indiana side. She may have been on the inside or may have been on the outside, I do not know which.

68. Ques. About how far from where the United States sunk did the boats collide?

315 Ans. She may have come down the river thirty yards before she sunk. She sunk very quick.

68(6). Question. Is your hearing good, and was it then?

Ans. Yes, my hearing is good now and was then.

69. Question. State whether you met any boat between Madison and the place of the collision on that night. If you did, what time of the night was it, and what distance did you signal them? and state whether you had any difficulty in hearing the return signal.

(Objected to by defendants as incompetent and irrelevant.)

Ans. I met one stern-wheel boat, about three miles below Warsaw. It was about half past ten o'clock. I signaled it at, I thought, about a mile off; I heard the return signal plainly.

70. Question. What kind of a whistle had the United States, and about how far could it have been heard on that night?

Ans. She had a very good one for all I know. I had always heard it before. I think it could have been heard a mile on that

316 night, may be more.

71. Question. After blowing your first signal, and before blowing your second, state whether or not you heard a dull, heavy sound, which you thought was an answer from the United States.

Ans. I may have heard it. I do not know whether I did or not. I' was so light that I could not tell whether it was a whistle or not. I did not think it was.

72. Question. If you had been in the middle of the channel when you blew your second signal, and the States had been nearer the Indiana shore than you were, and heading that way, and you had, upon giving your second signal, steered the boat quartering across the river towards the Indiana shore, and thus collided with the United States, what effect would the collision have had upon the America as to her direction, and how would the two boats have occupied the river, relative to each other, just after the collision?

317 (Objected to by the defendant as incompetent and irrelevant.)

Answer. I think that, in a case of that kind, the weight of the other boat would have turned the America and swung her down the river. The America would have laid on the Kentucky side of the United States.

73. Question. State whether or not Captain Whittin remained in the pilot-house on that night from the time you first saw the United States, until after the collision. Also state when he left the pilot-house.

Answer. He remained in the pilot-house until after the collision. At a short time after I backed the America out of the United States he left the pilot-house.

74. Question. Were you acquainted with the rules (prescribed for the government of pilots by the inspectors) on the night of the collision?

Ans. I was.

75. Question. According to those rules, was it the duty of the

318 pilot of the America or the pilot of the *the* United States, to give the first signal on that night?

(Objected to by defendants as incompetent.)

Ans. It was the duty of the pilot of the America.

76. Question. Were you well acquainted with the river at that place?

If you were, was there anything in regard to the river's width, shape of the channel, or kind of a night, or anything else that, in your judgment as a pilot, made it necessary for the pilot of the descending boat to give the first signal on the night of the collision, or, in your judgment, led you to expect that the pilot of the descending boat would give the first signal? If there was, state what it was.

(Objected to by defendants.)

Ans. I know the river there well; there was nothing, in my judgment, to cause him to blow a whistle first. There was nothing to lead me to expect that he would blow his whistle first.

319 77. Question. State whether or not the United States and America, previous to the time of collision, had been in the habit of passing each other at or near the place where the collision took place, in the night-time; and also state which side of the river the ascending boat was in the habit of taking.

Ans. We had met on the trip before that about 300 or 400 yards above where the collision took place. I took the Indiana side; going up at that stage of water I always invariably took the Indiana side. I always took the Indiana side, unless the river was bank full, when I had a large boat like the America.

Cross-examined by the defendant's counsel:

1st question. How long have you been a pilot?

Ans. Sixteen or seventeen years.

2nd. How long have you been a pilot on the Ohio River between Louisville and Cincinnati?

Ans. Fourteen years.

320 3. Question. Was not the America well and fully officered, manned, and equipped on the night of the collision?

Ans. As far as I know, she was.

4. Question. At the time of the collision and before, were not said officers at their proper places?

Ans. As far as I know, they were.

5. Question. Was not the reputation of the officers of the America for skill and care as high as any officers upon the western waters at the time of the collision?

Ans. I think they were; they were good men, all of them.

6. Question. On the America, before the collision, was anything left undone by said officers to avoid a collision; if so, what?

Ans. There was nothing that I know of. We had our fire-screens down to hide the fire, to keep it from shining out and blinding the pilot of the America. There was no trouble on the boat that night; everything had worked well.

321 7. Question. After the collision was anything left undone by the officers of the America to save the passengers on the United States and America? If so, what was it?

Ans. There was nothing left undone on my part to save everybody, or on the part of any officer on our boat except the captain, until the passengers were off.

8. Question. Did you not remain at your post and at the wheel of the America until the buttons on your clothes melted by the fire, or your clothes burnt by the fire?

Ans. I remained at the wheel until the bottons on my overcoat were scorched.

9. Question. Are not distances on the river on a gray night deceiving?

Ans. They are very deceiving.

10. Question. The first signals you gave that night were two signals?
Ans. They were.
11. Question. You afterwards blew two whistles more?
Ans. Yes, sir; I blew four altogether.
322 12. Question. Did you not wait the usual and proper time for an answer to the first two whistles before you blew the second two whistles?
Ans. I did wait what I thought was the proper time.
13. Question. Did you not then, after waiting the usual and proper time and being doubtful whether you had heard a response to them, blow your second whistle; and did you not blow your second whistle because, as you supposed, you had not heard a response to your first whistles, or was doubtful about it?
Ans. I did blow my second whistle then. I blew my second whistle because I supposed he had not answered my first whistles, or was doubtful about it.
14. Question. Before the time you blew your second two whistles, did you not ring the bells to stop and back the boat?
Ans. Just as I blew the first whistle of my second signal I rung the bells to stop the boat. Just as I blew my second whistle of the second signal I rung the bell to back the boat.
323 15. Question. Was not your bell promptly obeyed by the engineer, and was not the America backed both before and at the time of the collision?
Answer. The bells were promptly obeyed, and she was backing at the time of the collision She was backed very quick, as soon, I thought, as the engineer could ship up the engine to back. She was backing before the collision.
16. Question. When did she commence backing, and how far and how long did she back, and what was the effect on her headway?
Ans. She commence' backing in not over a quarter of a minute after I rang the stopping-bell. She backed without stopping, about four or five minutes. She backed about 50 yards down the river, I think. I do not think she was going a mile an hour when we struck; her headway was near about killed when we struck.
17. Question. What more could have been done than that you
324 did by most skillful and careful pilots, to have avoided a collision on the part of the America?
Ans. There was nothing, in my judgment, could have been done under the same circumstances. If it had to be done over to-night, I would have to do the same thing over.
18. Question. When you blew your first two whistles, did you anticipate any danger or difficulty?
Ans. Not a bit.
19. Question. Did not you' second two whistles indicate to the pilot of the United States that he must stop his boat and back her; that there was danger; and was that not one of the reasons that you blew them?
Ans. Yes; I blew my two last whistles to get an answer. That indicated to him that there was danger, if he was going to take that side.
20. Question. What safe or more reliable way was there to prevent a collision than to stop the boat and back her. Is not that the only
325 way to avoid a collision when danger appears?
Ans. That is the only safe way I know of to avoid a collision.
21. Question. After you had made your second signal as you have stated by blowing two whistles, you heard, you say, one whistle from the States; did you not then for the first time perceive and understand

that there was a cross of whistles; and did you not understand that whistle that way?

Ans. That was the first time that I perceived that there was a cross of whistles.

22. Question. When that cross of whistles took place, was not the only way to avoid a collision to stop both boats and back?

Ans That is my opinion about it.

23. Question. Does not a cross of whistles indicate danger?

Ans. It does; that is the only way you can tell there is really danger.

326 24. Question. Would it not be, in your judgment, as a pilot, bad and unskillful piloting in a pilot, after having blown for sides in meeting a boat, to change his course?

Ans. Yes; it would be, in my judgment, unless his judgment teached him he could get away from her by changing his course.

25. Question. If the wind, as you say, was blowing up stream that night, would or might not the sounding of your whistles, if made at the time the whistle of the United States was sounding, drown'd the sounding of that of the States, and would not the sounding of his whistle drown'd the hearing of one of yours by him?

Ans. If both the whistles are blown together, the sound of one whistle would drown'd the sound of the other. I have seen steamboats blow their whistles in the day-time, and have not heard the sound. If he was blowing two while I was blowing one, I would hear only one whistle from him.

327 26. Question. You say, in your examination-in-chief, that the United States floated down about thirty yards after the collision before she sunk, and that she sunk very quick. State how quick she took fire after the collision, and whether she was not enveloped in flames before she sunk.

Ans. She took fire as quick as powder would flash after the collision. She was afire all forward of her pilot-house, all over the forward end of the boat, hurricane-roof and lower deck, when she sunk.

27. Question. State how quick the flames rushed over and enveloped the boat United States when they collided.

Ans. I do not think it was over seven minutes before she was afire from bow to stern. So soon as the boat struck, a flame flashed right up, and all the forward end was afire.

Redirect examination:

1st question. You state in one of your cross-interrogatories that,
328 after you had blown for sides, it would not be good piloting upon meeting a boat to change your course; would not, in your judgment, it have been the proper course for the pilot of the United States to have taken the Kentucky side upon hearing your second signals?

(Objected to by defendants' attorney because it is a matter in chief, and no inquiry of the kind can be made under this examination, because no inquiry has been made in the cross-examination as to the conduct of the pilot of the United States, and this witness had no opportunity to know what ought to have been done by that pilot.)

Ans. I am not able to answer that, because I was pilot on the America and not on the United States. In my judgment, I could not tell what Remblin ought to have done.

his
NAPOLEON + JENKINS.
mark.

STATE OF KENTUCKY,
County of Jefferson, ss:

329 I, George M. Davie, a notary public in and for said county, do hereby certify that Napoleon Jenkins, the above-named deponent, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause now pending in the common pleas court of Jefferson County, of Indiana, wherein Charles Alling, administrator of Olis B. Sappington, deceased, is plaintiff, and Thomas Sherlock, Moses Andrew, Zachariah M. Shirley, and others are defendants; that the deposition was all written by me saving and excepting one question, it being No. 25 of the cross-examination, which was written by Hamilton Pope, esq., attorney for the defendants; that the said witness subscribed his deposition, with his mark, in my presence, after the same had been read to him carefully; that the defendant (the adverse party) were present, by Messrs, Hamilton Pope. and Warnock, of their counsel, and the defendant Zachariah Shirley, was also
330 present at the taking of said deposition; that the plaintiff was present by his counsel, Korbly; that the said counsel of the plaintiff and defendants consented and agreed to all the adjournments noted in the body of the aforesaid depositions; that all of said deposition was taken at the office of Muir & Bijur, in the city of Louisville, Jefferson County, and State of Kentucky, on the eleventh and twelfth days of November, 1870, agreeably in all respects to the adjournments agreed upon by the consent of both parties and agreeably to the annexed notice.

In witness whereof I have subscribed my name and affixed my seal this 12th day of November, 1870.

GEO. M. DAVIE,
Notary Public of Jefferson County, Kentucky.

And the plaintiff further read in evidence the depositions of Jacob Remblin, Richard M. Wade, and David Whittlin, together with
331 the pilot-rules attached to the same, taken at Cincinnati, on behalf of the defendants, in June, 1870.

Depositions of sundry witnesses taken before me, R. S. Fulton, a notary public within and for the county of Hamilton and State of Ohio, at the office of Lincoln, Smith & Warmock, over the First National Bank, N. W. corner Third and Walnut streets, in the city of Cincinnati and State of Ohio, beginning June 10th, A. D. 1870, between the hours of 8 o'clock a. m. and 6 p. m., on said day, pursuant to the annexed notice, to be read in evidence on behalf of the defendants in a certain action pending in the common pleas court of Jefferson County, in the State of Indiana, wherein Charles Alling, admr. of Otis B. Sappington, dec'd, is plaintiff, and Thomas Sherlock, Moses Andrew, C. G. Pearce et al., are defendants.

Evidence of Jacob Remellen.

JACOB REMELLEN, of sound mind and lawful age, being by me first duly sworn to tell the truth, the whole truth, and nothing but the
332 truth in relation to said cause, deposes as follows:

Examination-in-chief by Mr. Lincoln:

1. Int. State your name, age, residence, and occupation; how long you have followed your occupation, and where.

Ans. My name is Jacob Remelien. My age is fifty-one. I reside in

this city. I am a steamboat pilot by occupation. I have been piloting ever since 1839. I have piloted from Cincinnati to St. Louis, to Memphis, and to Nashville, and in the Cincinnati & Louisville trade.

2. Int. How long have you piloted in the United States Mail Line Co. trade, from here to Louisville?

Answer. I ran in that trade three years before the accident in December, 1868. I was a licensed pilot at the time, and had my license at the time of the accident.

333 3. Int. State what connection you had with the steamboat United States at the time of the disaster between her and the st. bt. America on the night of the 4th of December, 1868.

Ans. I was pilot of the United States and on duty at the time, and held the wheel at the time.

4. Int. State whereabouts in the river, with reference to low-water mark on the Indiana shore, was it that the collision between those boats occurred.

Ans. About one hundred yards from low-water mark on the Indiana shore, in the channel.

5. Int. How long after the collision was it before the United States sunk, and how much nearer, if at all, did she get towards the Indiana shore at the time she sunk?

Ans. About four and a half to five minutes after the collision the United States sunk. She sunk almost thirty or forty yards from
334 the shore, as near as I can tell, judging from the distance I swam, she got about 50 or 60 feet nearer the shore; somewhere in that neighborhood. She sunk in ten feet water.

6. Int. Are you or not shure that the boat was in the channel, or near the channel when the collision took place, and between low-water mark on the Indiana shore and the Kentucky shore?

Ans. I am shure she was in the channel of the river and between the low-water mark on the Indiana shore and the Kentucky shore at the time the collision took place.

7. Int. How was the water between where the boat sunk and the Indiana bank. Could or not a boat have gone up to and landed against the bank opposite where the boat sunk?

Ans. There was water enough inside of the United States for a boat to go up and land against the Indiana bank.

335 8. Int. Who was in the pilot-house with you at the time; and what were you doing at the time the boats struck?

Ans. William Turpin. I was steering the boat at the time they struck.

9. Int. How were you handling her at the time?

Ans. We were backing, sir, before they collided together.

10. Int. How many revolutions back had your wheels made before she struck?

Ans. Four. I was backing with both wheels.

11. Int. What did you do with your wheels immediately after the collision?

Ans. When the America backed away I rung the bells to stop backing on the larboard wheel, and to go ahead on the larboard wheel, to screw the boat around towards the Indiana shore, to work it around towards the Indiana shore. When I stopped backing on the
336 starboard wheel, and went ahead on both wheels for the Indiana shore, the larboard wheel was going ahead, when I stopped backing on the starboard wheel and went ahead on that.

12. Int. Who was on the hurricane-roof, on watch with you, at the time of the collision?

Answer. Captain Richard M. Wade. He was out in front. I saw him throw down a couple of buckets of water.

13. Int. What happened to the boat after the collision, and after she sunk?

Ans. Her cabin burned off.

Cross examination by Mr. Korbly:

1. X-int. What was the stage of water at the time?

Ans. About fifteen feet in the channel.

2. X-int. How many feet deep is the water there at extremely low water?

337 Ans. About twelve or thirteen feet.

3. X-int. How far from the water-line or shore, as the river then was, is the extreme low-water mark? I mean measuring down into the river.

Ans. I don't believe it is more than thirty or forty yards. That bar is right bluff.

4. X-int. State whether the boat grounded where she sunk, and whether she remained in the posisetion in which she sunk until she was raised.

Ans. Yes; she sunk on the bottom, and remained in that position until she was raised.

5. X-int. How long did you remain on the boat after she grounded?

Ans. Not very long, sir. From the time I left the pilot-house until I got on to shore was about (6) six or (7) minutes, (6 or 7 minutes.)

338 In about two or three seconds after she grounded I left the pilot-house. The captain hollowed to me twice to leave the pilot-house and save myself.

6. X-int. How long did the boat continue to burn after you reached the shore?

Ans. The boat was all in flames when I got to the shore, except a small part of the skylight in the stern, where I jumped off. I am not able to say.

7. X-int. How far from the edge of the water on the Indiana side, as the river then was, did the collision occur?

Ans. About one hundred yards.

8. X-int. How wide was the river at that point there?

Ans. About six hundred yards, according to my present recollection.

9. X-int. Did you, at the time of the collision, particularly take notice how far you was from the Indiana shore?

339 Ans. Yes, sir.

10. X-int. State what time in the night it was when the collision took place.

Ans. Between 11 & 12 o'clock—about twenty minutes past eleven.

11. X-int. What kind of a night was it with reference to being light or dark and cloudy?

Ans. Well, the moon was up. It was cloudy. It was what pilots call a gray night. The wind was blowing. It was deceitful night as to judging of distances. You couldn't see quite as far or quite as well as on a starlight night. I had a hollow to run by, and the Indiana shore was straight there.

12. X-int. How far apart were the two boats when you first saw the America that night?

Ans. We was two miles apart. The United States was at the upper end of Captain Summon's farm, and the America was at the point above Warsaw.

340 13. X-int. Which boat signaled for sides of the river first? State what signal was given, and how close were the boats together when it was given?

Ans. The United States signaled first, to the best of my knowledge. It was one whistle, to keep to the right. The boats were a mile apart, as near as I could tell.

14. X-int. Have you any doubt now, or had you any doubt then, at that time, as to whether the United States signaled first?

Answer. I have no doubt now, and had no doubt at the time, that the United States signaled first.

15. X-int. Did the America answer the signal? If she did, how did she answer it; how soon after the signal of the United States, and at what distance from the America was the United States at the time you heard the whistle?

341 Ans. I got answer in about three seconds. She answered with one whistle. As near as I could tell, they were about a mile apart.

16. X-int. Have you any doubt now, from your own knowledge, or had you any at the time, as to the number of whistles the America blew in answer to you' one whistle?

Ans. No, sir. I only know by hearing one whistle?

17. X-int. At what speed was the United States going at the time the signals were given?

Ans. From 14 to 15 miles an hour on that reach. The wind was blowing against us there. Above where the wind did not strike us we ran a little faster.

18. X-int. Were there any other signals given before the collision? and if so, state how many were given and in what order, and how far the boats were apart, and at what rate of speed the United States was going at the time.

Ans. Yes, sir. The America, from her first to her second
342 signals, was from a half to three-quarters of a minute. She gave two whistles, blowing for the Indiana shore. As soon as I heard his whistles, I went and stopped the United States, and rung the bells to back her, and blew one whistle at the same time. There was no whistles after that. Mine was the last whistle. As near as I could judge, the boats were from three hundred to four hundred yards apart at the time the America blew her second signal. The United States was making from 14 to 15 miles an hour at the time of the America's second signal, as near as I could tell.

19. X-int. How soon after the America's second signal did the collision occur?

Ans. A short time; perhaps a minute, half a minute, a minute and a half, or two minutes.

20. X-int. How did the boats strike each other? Tell what occurred after the collision.

Ans. The America came in on our larboard-guard forward,
343 struck us about the chocks, on the larboard side. I kept backing, and when the America backed out she backed away from the Indiana shore, and then the America went into the Indiana shore before we did.

21. X-int. State how the boats came together; how long they remained together; their positions relative to each other, and to the

shore; how far it was from the boat nearest the shore to the shore at the time the two boats were together.

Ans. The United States was the boat nearest the shore, and the America knocked our bow around about twenty-five feet towards the Indiana shore. When the America backed out from us she backed away from the Indiana shore, and then headed for the Indiana shore. I worked in towards the Indiana shore, and the America was lying in between me and the Indiana shore, with her stern out in the river, quartering stern down, and with her bow in on Indiana shore.

344 I was lying in about the same position, but further out in the river. As I was working around for the shore our stern flanked in against her wheel-house.

22. X-int. At the time the United States flanked in against the America you were lying parallel with the America, were you not?

Ans. Yes, sir.

23. X int. Did you ground there?

Ans. We went ahead some; at least I thought we did.

23 X-int. How long did the boats remain together alongside of each other, as you have stated?

Ans. A few seconds, as near as I could tell.

24. X-int. How much nearer did you get to the Indiana shore after the boats separated the second time?

Ans. Only a few feet.

25. X-int. What became of the America after they separated a second time?

Ans. She backed down the river away from us. I don't know

345 how far, but she went in below.

26. X-int. You state you were a licensed pilot at the time of the accident. Was not your license revoked immediately afterwards and on account of the accident?

(Question objected to by defendants' attorney as incompetent, as these defendants were in no way parties to or in connection with the action of the inspectors, and were in no way affected by any action which the inspectors might have subsequently taken in relation to that matter.)

Ans. I have had no Government license as pilot since the accident. It was revoked afterwards; two or three mon's afterwards, I believe.

(Answer objected to by defendants' counsel.)

27. X-int. You state that you were backing the United States before the boats collided, and that your wheels made four backward revolutions before the collision. How many backward revolutions would it have taken at the rate of speed the United States was then

346 going, to have brought her to a stand-still?

Ans. About nine.

28. X-int. How fast was she going at the moment of collision?

Ans. She had her headway checked. She might have had some headway yet. The wind was against us. When the two boats came together, her headway was checked by the wind against us and the few revolutions we did make.

29. X-int. Do you know whether the wheels of the America were backed before the collision?

Ans. I don't know what they did on the America. I don't know.

30. X-int. State how many miles an hour, to the best of your judgment, the America was going at the moment of collision.

Ans. I don't know. I have no judgment upon it.

31. X int. At the present time you are in the employ of the Mail Boat Co., are you not?

347 Ans. Yes, sir.

Re-examination by Mr. Lincoln:

1. Re. State whether or not, from the time the signals were given and before that on until the collision, you were giving *and* careful attention to the navigation of your boat, and to the safety and security of her navigation?

Ans. I did, sir.

2. Re. What, if any, want of care and skill was there on your part, or the part of Captain Wade, or any of the officers of your boat, so far as you saw or knew?

Ans. I done my best, and they all attended to their business who were in sight and I could see.

3. Re. State whether or not you were giving every possible care and attention to your boat after the collision, and making every effort possible to get the boat into shore to save the passengers.

Ans. I did, sir.

348 4. Re. What more could you have done than you did do from the time you blew your signals, up to the time the United States sunk on the bottom, for the safe navigation of the boat, and the safety and security of the passengers?

Ans. I done my very best; all that I could do to the best of my judgment. I was surrounded by the fire before I left the pilot-house.

5. Re. If anything was left undone usual to be done under such circumstances for the safe navigation of the boat, either by you or Captain Wade, or any officer on board the United States from the time the whistles were first blown until the boat sunk on the bottom, state what it was, or what more anybody could have done for said purposes.

Ans. Everybody was doing their best. There was nothing left
349 undone so far as I know. I am satisfied that the engineers, captains, mates, and clerks, and everybody did their duty?

6. Re. int. What was the usage and custom on the river under the pilot rules with reference to the descending boat blowing the first whistle whenever, in the judgment of the pilot, the safe and proper navigation of the vessel required it?

Ans. In the darkness of the night narrowness of the channel, or any danger at navigation or any other cause, the descending boat, when necessary, can take the other side by blowing the first whistle and the other boat must govern herself accordingly. They always have done it on bad nights ever since I have been a pilot. All pilots have done it, not only myself; it was the custom.

7. Re. Which was the side ordinarily taken by boats of the size of the United States in going down stream, according to your judgment, and which was the channel side?

Ans. The Indiana side. The channel is near the Indiana side.
350 It was a bad night, and the wind was blowing.

8. Re. When you blew one whistle, and heard one in reply, what did that mean under the pilot rules and the custom of the pilots?

Ans. One whistle was keep to the right, and one whistle was all right, it meant that there was an understanding.

9. Re. When did you first know that there was any misunderstanding between you and the pilot of the America, and when did you first anticipate any danger?

Ans. When Mr. Jenkins blew his two whistles, to go to my right, I first knew there was something wrong, that was to go to the left. When I heard his two whistles I rung my bells to stop, to back; put my foot

on the trea lle and blew one whistle at the same time, and so on, as I have already stated.

351 10. Re. If Mr. Jenkins did in fact blow two whistles when you heard but one at the first signal, how can you account for hearing but one?

Ans. By my blowing a little bit first it might have drowned one of his whistles; that is the only way I can account for it.

11. Re. Have you ever noticed that when two whistles were sounded but one was heard? What have you noticed as to that in your experience on the river, & *and* how do you account for it?

Ans. It hasn't been very long since I met a boat down here at McCullough, and she blew two whistles and I heard but one. I saw the steam in both whistles, and knew that they blew two; it must be on account of the wind; this was in broad day light, and since I have been on the Durnout.

12. Re. You have stated that you were about a mile apart when you blew your first whistle, so far as you could judge, and that you
352 were about 300 or 400 yards apart when you heard the America's second signals, which was two whistles; what means have you of telling the distance?

Ans. Well, its pretty much all guess-work, sir, to tell the distances in the night; there is no way of telling with any certainty with the eye; you have to guess at *at*.

13. Re. If there was anything on that night that enabled you to judge better of the distance than Jenkins, and to tell where to blow than he, or anything that you notices that might have interfered with his judgment in that matter, state what it was.

Ans. The night was bad; the boats were running fast, and as I had not heard from the America I blew for side. I thought it best to blow in due time.

14. Re. How was the wind and what effect would that have on the smoke and steam of his starboard chimneys?

Ans. It blowed in front of him, quartering across towards the
353 Indiana shore from the Kentucky shore; this smoke did bother me any, and my own smoke went behind me and didn't bother me.

15. Re. Will you state what your relations with Mr. Jenkins *was*; whether friendly or otherwise?

Ans. We were always good friends; were at the time, and are yet.

16. Re. What was the usage and custom in running such boats, on such a night as that was, at that stage of water, with reference to their ordinary speed?

Ans. It was customary to run, at that stage of water, at the ordinary speed; it was a proper night to run at ordinary speed.

17. Re. When there is no wind what was the ordinary speed of the United States, at that stage of water, down stream?

Ans. Well, from 16 to 17 miles an hour.

18. Re. Do you not know that good pilots differ as to which
354 side they will take there in ascending and descending the stream at that stage of water?

Ans. There is difference in opinion about piloting; some take the Indiana and some the Kentucky side. I always take the Kentucky side myself in going up stream.

19. Re. When the United States settled on the bottom how did she lie?

Ans. She lay quartering towards the shore; her bow nearest the shore.

20. X-re. When you say in answer to the 7 x-int. that the collision was about 100 yards from the Indiana shore, and in your examination-in-chief that she sunk about forty yards from the shore, I would ask if you had any means of telling accurately, or whether that is your simple judgment?

Ans. That is my simple judgment; everything was done quick.

21. X-re-int. What better or more accurate means have you of
355 telling that you are in the channel than you have of telling the distance you are from shore; by what means do you keep your boat in the channel?

Ans. We know the channel is over there, and there is a big hollow right ahead of you that you can see day or night. If you get off the channel, you can tell by the way she handles the boat will seek deep water.

22. Re. If you blew one whistle and Jenkins blew two in reply, what would that two tell you to do?

Ans. It would tell me to stop and back, which I did mighty quick. It would tell me that he couldn't get to the right, and that I must stop and back.

23. Re. When you heard Jenkins' second signal of two whistles, and you replied with one, what would that tell him to do?

Ans. It would tell him that I couldn't go on that side, and that he must stop and back.

356 24. Re. What was the best and only way either of you could do, after you discovered there was a misunderstanding of the whistles, to avoid collision?

Ans. It was to stop and back.

25. Re. Why did you not, when you discovered the misunderstanding of the whistles, blow several short quick sounds of the whistle?

Ans. I thought one whistle would tell them that I could not get on his left, and that that was the best thing to be done. I couldn't have time to blow several short whistles. Just after I took my foot off the treadle they collided. I was going to blow the short whistles after I had blown the one, but there wasn't time.

26. Re. Would several short whistles done any more than tell him to stop and back?

Ans. No, sir.

27. Re. When you blew the one where were your hands and to what was you directing your attention?

357 Ans. I had hold of the wheel, was ringing the bells, and looking out at the other boat.

28. Re. When a pilot finds that his signal has been crossed, what does he always do under the rules and regulations existing at that time?

Ans. Stop and back; that's what I did do.

Recross-examination by Mr. Korbly:

1. Re-x. Can you repeat the 1st, 2nd, & 10th rules prescribed by the inspectors for the government of pilots on the Ohio River? If you can, please do so.

(Objected to by attorneys of defendant.)

Ans. I know what they mean. I can't repeat them word for word.

2. Re-x. State the substance of them.

Ans. 1st rule, two whistles to keep to the left when two steam-
358 boats approach. One whistle is keep to the right. If the danger of navigation, darkness of the night, or narrowness of the channel, or any other cause, shall render it necessary, the descending boat may

choose side, and if she wants to take the other side she may do so by giving the necessary signals, and the ascending boat must govern herself accordingly. These rules must be observed day & night. 2nd rule says that there must be an understanding at 800 yards between the two boats. There is a little more to it. I can't remember just now. They have made some little alteration in the 10th rule, and taken a part of the first rule to add to it. The 10th rule is, that in case of doubt as to the signals, five short whistles shall be blown in quick succession to stop the boat.

3. Re-x. I'll ask you if you could not have told before Jenkins whistled the second time by looking at his boat and the signal-lights on the chimneys of the America and the jack-staff of the America, that
359 he was steering to pass you on the Indiana side.

Ans. No, sir; he was out in the middle of the river. As soon as he blew his two whistles he left the middle of the river and came over towards the Indiana shore.

4. Re-x. I'll ask you if he was not steering to pass you on the Kentucky side up to the time he blew his second signal, and changed his course, as you have stated?

Ans. I thought so.

5. Re-x. Why did you think so?

Ans. He was out in the middle of the river and I was between him & the Indiana shore.

6. Re-x. If Mr. Jenkins had blown two whistles in reply to your one, and had supposed that you blew two, would he not have changed his course towards the Indiana shore before the two boats got within 400 yards of each other?

Ans. Yes, sir.

7. Re-x. At what distance ought he to have changed his course?

Ans. There must be an understanding at 800 yards.

360 2 re-examination:

12. Re. Can you, or any body else, tell when you are 800 yards apart; must you or not exercise your best judgment?

Ans. You can only exercise your best judgment. When I first blew my signal I supposed there was plenty of time to get a reply at 800 yards.

JACOB REMLEIN.

By consent of counsel the further taking of these depositions is adjourned until Monday, June 13th, 1870, to be continued at the same place, and between the same hours.

R. S. FULTON,
Not. Public, Ham. Co., O.

OFFICE OF LINCOLN, SMITH & WARNOCK,
Cin'ti, June 13th, 1870.

The further taking of these depositions is resumed, pursuant to adjournment of Friday, June 10, 1870, above noted. Present, the plaintiff, by his counsel, Charles A. Korbly; the defendant, by their
361 counsel, T. D. Lincoln, and the notary public.

R. S. FULTON,
Not. Public, Ham. Co., O.

Evidence of Richard M. Wade.

RICHARD M. WADE, of sound mind and lawful age, being be me first duly sworn to testify to the truth, the whole truth, and nothing but the truth relating to the said cause, deposes as follows:

Examination-in-chief, by Mr. Lincoln:

1. Int. State your name, age, residence, and occupation, and how long you have followed your occupation.

Ans. My name is Richard M. Wade. I am fifty-four years of age. I reside in Covington, Kentucky. I am a steamboat captain, and have been steamboat captain between 23 and 24 years, most of the time; part of the time as pilot.

2. Int. State what, if any, connection you had with the steam-
362 boat United States on the 4th of December, 1868, and if any, where were you at the time she collided with the steamboat America, on that night?

Ans. I was captain of her. The collision occurred about a mile above Warsaw, Kentucky. At the time the boats struck I was on the hurricane-roof of my boat. I was on watch at the time, forward of the chimneys. It was the captain's watch. Jacob Remlein was pilot on watch at the time, and William Turpin, steersman, was in the pilot-house with him at the time.

3. Int. What was Remlein's character as a careful, skillful, and prudent pilot in that trade; and how long had he been connected with it as pilot?

Ans. I have known him for 29 or 30 years, as a pilot in that trade, and I don't think any one stood higher as a pilot. I considered him one of the best there was.

4. Int. How was it with Turpin, as a steersman, and how long had he been in the trade?

363 Ans. Before that time I don't know how long he had been in that trade; for some time, I don't know how long. He was a careful, steady young man, and a good steersman, very good.

5. Int. Where in the river, with reference to the Indiana low-water mark, did the collision take place? If on either side of low-water mark, state on which side it was, and how far from it?

Ans. The collision occurred on the south side of low-water mark, on the Indiana shore, and about 75 to 100 yards from the low-water mark on the Indiana shore, and between that and the Kentucky shore.

6. Int. Where was the United States at the time, with reference to the channel of the river?

Ans. Well, the United States was in the channel.

7. Int. What, if any, neglect was there on the part of those in charge of the United States, or those in charge of the America, as far as you could see or could judge? If there was any neglect of means usu-
364 ally adopted for safe navigation, state in what respect it was.

Ans. There wasn't any neglect on the United States, and I don't know of any on the America. I couldn't tell so much about her.

8. Int. What was done by the United States as soon as they came together for the safety and protection of the passengers?

Ans. Every effort was made to try to get her to shore as quick as possible.

9. Int. What, if any, neglect or want of care was exhibited by the pilot or by any of the officers or crew of the boat, so far as you could see or tell?

Ans. I don't know of any at all. I saw none.

10. Int. State whether or not you were there and giving strict attention to this matter, and strict and careful attention to the navigation of your boat from the time the first whistles were sounded until she sunk on the bottom.

365 Ans. I was, and for some little time after she did settle on the bottom I was giving strict attention.

11. Int. How long had you been connected with that trade, and in what capacity and how long, and in what capacity had you been on the river before you went into that trade?

Ans. I had been there nearly five years as captain of a steamboat from first to last. I piloted there a great many years ago. I had been on the river as pilot and captain before I went on that trade about 25 years. I have been on the river now about 32 years. I am still running in that trade.

12. Int. How was the said boat manned, equipped, and found, as to tackle, apparel, and furniture, &c., at the time?

Ans. She was fully equipped, and had a full number of officers and crew. There are no boats better equipped than they were. I don't think there was anything lacking. She had more than the law required in some respects.

366 13. Int. What do you know of her being licensed, enrolled, and inspected, and where was that done? Do you know whether she had her papers on board and in full force at the time, and what became of them?

Ans. She was licensed and enrolled at this place, and inspected also. I think, as near as I can recollect, her papers were on board and in full force at the time. I took them aboard myself a short time before that. I presume the papers were burnt up. The books and papers were all destroyed in the disaster.

14. Int. Where were the steamers United States and America owned?

Ans. They were owned in Louisville, Cincinnati, and Aurora.

15. Int. Of what country are all the owners citizens?

Ans. Of the United States.

16. Int. Where were the steamers built, and by whom and of

367 what country were the builders citizens?

Ans. They were built in this port by Johnson, Morton & Co., who are citizens of the United States.

17. Int. Where was and for how long had been the principal office of the Mail-Line Company?

Ans. At Cincinnati. The principal office was here at the time; had been many years.

18. Int. Where did the president and managing owner of the Mail-Line Company reside at the time and have his principal office?

Ans. At this place—Cincinnati. It was Capt. Pearce.

19. Int. Who was on board of the America at the time as captain, and pilot, and steersman, and what was their standing and ability to fill their respective offices?

Ans. David Whitten was captain; Napoleon B. Jenkins, pilot; and Emanuel Turpin, steersman. Their standing and ability was good.

368 20. Int. Do you know how the America was manned, equipped, and appareled at the time? If so, state.

Ans. The America was well equipped, and had a full complement of officers and crew. I don't think there was any off. The boats were the best equipped boats in the United States, and had all that the law required, and a great deel more.

21. Int. What caused their loss?

Ans. They were burned up by fire.

22. Int. What caused the fire?

Ans. Breaking open some coal-oil barrels carried about 75 or 80 feet forward of the forward end of the boilers, on the forecastle, under the guards.

23. Int. Where do the rules of the inspectors, your license, and the law require it to be carried?

Ans. Our license requires it to be carried not nearer than 20
369 feet from the furnace-doors. That is the rules of the inspectors. Since this accident we have found out that it is dangerous, and don't carry it at all.

Cross-examination by Mr. Korbly:

1. X-int. How long before the collision had you been on the hurricane-roof?

Ans. I had just left the roof and got to the bottom of the first flight of stairs when the first whistle blew, and I then returned to the roof. I got to the roof before the first signal was done blowing.

2. X-int. Had you been down in the cabin before that? If you had, state how long before, when you went back on the hurricane-roof, and how long you had been on the hurricane-roof just previous to going down the stairs, as you have stated.

270 Ans. I had been down in the cabin before that, not a great while before. I was down there and stopped some noise. They were serenading. I had been on the hurricane-roof but a short time; not long. I can't say how long, for I didn't pay attention at the time.

3. X-int. Where there many in the ladies' cabin, and from the part of the boat from the middle gangway back, when you left to go upon the roof? If you can name any who were there, do so.

Ans. I think they had pretty generally retired in the ladies' cabin. There were several in the gentlemen's cabin. I think Mr. Steel Bright, Mr. Harvey Foster, and Mr. Sappington were there. I don't remember whether I saw Mr. Lew. Vance at that time or not. I didn't know any others.

4. X-int. What were you going down for at the time you heard the w'istles?

371 Ans. I was going to the water-closet, intending to return in a moment.

5. X-int. Had the pilot, Jacob Remline, been down in the cabin that night?

Ans. Don't think he had been in the cabin since supper. Jake Remline never leaves his wheel.

6. X-int. How near to the water's edge, on the Indiana shore, did the United States sink after the collision?

Ans. I think about 40 or 45 yards from the dry shore. It might have been a little more or less than that. She settled pretty nearly straight up and down the stream, parallel with the shore. There was twelve feet of water in the channel at the shoalest place betwe'n here and Louisville at the time, at Grassey Flats, 16 miles above Louisville.

7. X-int. When did you first observe the America that night?

Ans. When I came on the roof, as our whistle was sounding.
372 I hadn't seen her before I started down stairs; she was too far off.

8. X-int. How far was she off when you first saw her? State whether you could then see her distinctly.

Ans. I think she was about a mile off. I couldn't see her signal-lights distinctly at that time; that was all. I might have seen other portions of the boat, but don't remember.

9. X-int. What signals did the United States give?

Ans. One sound of the steam-whistle; full an average whistle; a very distinct whistle.

10. X-int. What answer did the America make?

Ans. I heard one sound in answer from her shortly after the United States ceased to blow, a very short time after, a second or two after. It was a plain, ordinary whistle.

11. X-int. Could you see the smoke from the America chimneys at the time she answered, & did you?

373 Ans. Yes, I think I could. I don't recollect whether I did nor not.

12. X-int. How far was the America off when she gave the answering signal?

Ans. I think between three quarters of a mile and a mile off.

13. X-int. You kept observing her from that time up to the time she gave her second signal?

Ans. Yes, sir.

14. X-int. You could tell from the signal-lights upon he', her jack-staff, and, perhaps, the lights on her cabin, the course in which she was steering before the second signal, could you not?

Ans. No, sir.

15. X int. At what angle would a boat have to be turned in order to conceal either the red or green lights on her chimneys?

Ans. Almost square across the river.

16. X-int. Was there any other signal given by either boat?

374 If so, what was it? How far were the boats apart? And state all about it

Ans. Yes; there was. There were two sonnds from the America at a distance of some 400 or more yards off, and was answered immediately in reply by one from the States. The States stopped engines and backed at the same time.

17. X-int. How soon after the signal of the States in reply did the collision take place?

Ans. Something like half a minute; perhaps a little more; about that.

18. X-int. Could you not tell before the America gave her second signal that she was endeavoring to pass you on the Indiana side?

Ans. No. The crossing of the whistles was the first evidence of it.

19. X-int. How fast was the States going at that time?

Ans. Some 15 miles or more an hour; from 15 miles to 18 miles an hour.

20. X-int. Who were the owners of the two boats?

375 Ans. Thomas Sherlock, Patrick Rogers, Jonathan Barker, Theodore Cook, Z. M. Shirley, D. S. Benedict, Wm. C. Heite, Frank Carter, James Gaff, Thomas Gaff, C. G. Pearce, William Gibson. Both boats were owned by the same parties.

21. X-int. How much coal-oil was on the United States at the time of the collision?

Ans. From 20 to 25 barrels.

Redirect examination by Mr. Lincoln:

1. Re. State what the usage was at the time of the accident with reference to the pilot on the descending boat blowing first for choice of sides, whenever in his opinion the safe and prudent navigation of the boat required it?

Ans. It was a very common occur'ance. The descending boat has the preference of the channel generally. There are times when it is absolutely necessary for safe navigation, and it can't be avoided, that

376 the descending boat must blow first.

2. Re. When you heard one whistle from the America in reply to your one, what did that mean?

Ans. It meant all right, go ahead.

3. Re. When was it that you first learn'd that there was a misunderstanding between the pilots; what was done then; and what was done to avoid the difficulty?

Ans. When I heard her second signal we stopped and backed. Everything was done that could be done. It would have been very imprudent to try to sheer; you might have gone into the boilers then.

4. Re. Have you any means of telling, with any certainty, when a boat is a mile off after night, or 800 yards off; have you any other means than to exercise your best judgment?

Ans. That's all; its mere guess-work. You guess the best you can.

5. Re. If there is anything whatever that could have been done
377 after the collision occur'ed which was not done on either boat for the safety and preservation of the passengers on board, please state what it was.

Ans. I don't know of anything at all; everything was done that could be done.

6. Re. If the America in her first signal did in fact blow two whistles when you heard but one, how can you account for it? What have you observed in relation to but one sound being heard when two were blown?

Ans. By one sound coming in contact and being drowned by the States' whistle. Very often I have see' steam *raise* when I heard no sound at all.

7. Re. Suppose the America had blown two on her first whistle and heard one in reply, would or not the pilot wait a short time expecting to hear another before he would know that his whistle was crossed?

Ans. Certainly he would; he would have to wait.

8. Re. Suppose he had blown two; after waiting a sufficient time
378 he found that his whistle had been crossed, and then had blown two, what would that tell the pilot of the States?

Ans. It would tell the pilot of the States to stop and back; I will do the same; I can't get to the other side.

9. Re. When Remline heard two in answer to his one, is there any way in which he could better tell Jenkins to stop and back than to blow one again; if so, what was it?

Ans. No. To cross a whistle is the quickest way to stop a boat and back her. They then know that there is danger; that means danger.

10. Re. State what liability to error there is in the distance two boats are apart that are meeting in the night. Is there anything occasionally very deceptive in it? If there is, state what it is.

Ans. Yes, there is. When it is cloudy, a gray night, a misty night, objects are very deceptive as to distances; they look to be further
379 off than they really are. Two men standing side by side will often differ in the judgment of the distance; pilots on different boats still more.

R. M. WADE.

R. M. WADE recalled June 15, 1870, pursuant to adjournment noted on last page of these depositions.

11. Re. Was or not the United States at any time after leaving Sugar Creek, and up to the time of the collision, inside of low-water mark; that is between low-water mark and the Indiana shore?

Ans. The United States was in the channel of the river pretty much

all the time after leaving Sugar Creek up to the time of the collision, and was not at any time between low-water mark and the Indiana bank.

12. Re. How rapidly did the boat catch fire and burn, and what was the condition of your boat at the time you left her, and Remline left the pilot-house?

380 Ans. Very rapidly. At the time we left her, her forward part was all on fire, and her cabin was all in flames pretty much the entire length of her, I think.

13. Re. What more could you have done, or could Remeline, or any other officer of your boat, in the way of aiding or saving anybody, more than you did? Do you know how Remeline, the clerk, and the engineer got ashore? What efforts did you make to get passengers out of the river, of the wreck, after she sunk, to the shore?

Ans. They couldn't have done anything more. The clerk swam ashore and so did Remeline and the engineer. I went into the river several times and pulled persons out of the water, who were struggling in the river, to the shore. I went out to the stern of the boat with the raft and took a man who was hanging to the yawl, which was turned upside down, and took him ashore. He was the last man off the States taken ashore. That was Joe McCammon.

381 Re-examination by M. Korbly:

1. On what part of the hurricane-deck were you standing, whether forward or aft of the chimneys, and on which side of the boat, when you first saw the America that night?

Ans. On the starboard side, forward of the chimneys. Just as they were about to strike I went back a little.

2. Which side of the middle or thread of the river did the collision take place?

Ans. Well, the nearest the Indiana shore. She was in the channel, and the channel was nearest the Indiana shore. The channel there, in low water, was about 75 yards wide. It is wider when the river is up.

3. While the United States and the America were together at the shore, state whether you observed passengers passing from the former to the latter; if you did, state by what means, and whether any plank was laid over?

382 Ans. Yes, there were passengers got over to the America when the America was afloat on the river. A good many did. There was no planks put over on her. There is no gangway-plank on the upper guard. They jumped over and climbed over when the boats were in close proximity.

4. I will ask you if a great many more passengers could not have escaped from the United States on the America if the latter had not been backed away from the former at the time they came together the second time?

Ans. No, I think not; I think they got over as long as the fire on the United States would permit them to get over. The wind changed the direction of the fire right over on the America and on the larboard side of the States.

5. State whether it is not the duty of the pilot of the descending boat, according to the first rule for the government of pilots, prescribed by the board of supervising inspectors, contained in Exhibit A

383 to Captain Whittier's deposition, now shown you, to await the signal of the ascending boat?

Ans. Well, up to that time it had not been made a question. Pilots

considered they had. The rule contradicted itself. Pilots on the descending boat had very frequently, up to that date, blown first when, in their judgment, they thought it necessary, without waiting for the signal of the ascending boat. They do so occasionally. If a pilot should follow that rule, he would have a collision every month; it takes all his judgment away from him. They have done so several times since that I have observed.

6. State whether that Exhibit A containes all the rules prescribed by the supervising inspectors for the government of pilots which were in force at the time the collision took place.

Ans. This is all the rules prescribed by the inspectors. There are other rules not prescribed by the inspectors.

7. State what they were in relation to the passing of steamboats
384 and boats, and the avoidance of collisions, by whom and what authority they were prescribed; and if they are in print or manuscript, state where they can be found.

Ans. I can only state so far as the laws of Congress is concerned. It says that "under no circumstances shall a pilot come into collision with another boat, if he can avoid it." I think those are the words. The rule was with pilots, if he was on the descending boat, and thought the other boat was close enough to blow first, if, in his judgment, they were close enough to blow signals, it was very customary; they frequently did it. I don't think there was one on the river that didn't follow it at times, to a certain *times, to a certain* extent. It is not in print or MS.; it is also one of the general rules to stop and back if boats are approaching each other and danger is feared. It is generally the best and quickest way to avoid difficulty. These rules are prescribed by the pilot's experience and knowledge of managing a steamboat. I think he
385 is the best qualified of any person. That's my opinion.

8. Would it not be the duty of *the duty of* the pilot of the descending boat if, in his judgment, it would be perilous to await the signal of the ascending boat, because he could take but one side of the river with safety, to check the speed of his boat; and if the pilot of the ascending boat did not signal the side which the descending boat could take in due time, then to give the signal of doubt or misunderstanding required by Rule 10, and stop and back his boat.

Ans. I don't hardly understand the question. In such a case it would be his duty to go slow. If the ascending boat did not signal the side he could take with safety in due time, then I think it is the duty of the descending boat to signal. If I was a proper distance off—say three-quarters of a mile off—I would blow the short, quick whistle required by Rule 10; but if I was within whistling distance, and had not heard the whistle of the ascending boat, in such a case I would signal the descending boat.

386 9. If the descending boat, in a case where the pilot of the ascending boat had not signaled by the time the boats had got 800 and a 1,000 yards of each other, were to give the short quick whistles prescribed by Rule 10, what would that tell the pilot of the ascending boat to do?

Ans. It would tell him this: "I want to communicate;" "I don't understand you;" "I want to stop." That is, if you have time to do it. These things have to be done very quick.

10. In such a boat, where the descending boat was going at the rate of 15 or 16 miles an hour, and the ascending boat at the rate of 12 miles an hour—I speak of boats of the size of the United States and America—would there be time, at the distance of 800 yards, to give the

short, quick whistles referred to and to stop and back the boats so as to avoid a collision?

Ans. I'll answer that by saying that, if the engineer understood just what the pilot was going to do, I think there would be.

387 11. Int. Couldn't the pilot make him understand?

Ans. Yes, by ringing his bell. He might be off attending to his boilers, away from his engines, and it would take him some little time to get to them.

12. Int. What other way is there of signaling an approaching steamboat to stop and back than that prescribed by Rule 10?

Ans. There is no other way unless you can holler at her, or ring the big bell.

13. Int. Can you state about how much time, in your judgment, elapsed between the first and second signales on the America on that night?

Ans. I don't think I can; it would only be guess-work.

14. State the best of your judgment.

Ans. It has been so long ago now, I couldn't call to mind.

15. Couldn't the States and the America, approaching each other at the rate of 15 or 16 miles an hour down stream and 12 up stream,

388 respectively, have been stopped and backed by any known signals given when they were 600 yards apart so as to avoid a collision?

Ans. I think the States could have been stopped going down stream on that night at 300 yards. It would have been very close work to do that. I never ran the America and don't know what she could have done.

Redirect examination by Mr. Lincoln:

1. You mean, do you not, that if the engineer was on his box at the time the pilot rung, the engines didn't catch on the center as everything was running rapidly and smo'thly?

Ans. I mean if the engineer was on the foot box with his hand on the throt'le-valve, and the engines didn't catch on their center.

2. Can the pilots, the one know what the other is doing so as to act precisely as he would if he knew how it appeared to the other

389. pilot and knew precisely what the other is going to do?

Ans. No, sir; they can't.

3. Can either of them tell when he is just 600 or 800 yards from the other boat, in a gray night, or any kind of a night?

Ans. No, sir; not on any kind of a night; on a gray night a light looks further off than it really is; it is very deceptive in a gray night.

4. Int. Is it possible for a supervising inspector, pilot, or anybody else, to tell what a pilot shall do to navigate his boat safely in the varying circumstances under which they are placed in meeting, among which are the darkness of the night, lowness of the water, wind, position of the meeting boats, the shape of the channel? Can anybody tell beforehand just what a good and skillful pilot should do, and are there any printed rules or rules provided beforehand, or can there be any for all the changing circumstances under which a pilot may find himself?

390 Ans. The pilot in the pilot-house can tell that better than anybody else. There are no rules, and I don't think there can be any, that will meet all the circumstances in which a pilot may be placed.

5. Int. Do you know anybody in this world, whether pilot, captain, lawyer, or judge, who was absolutely perfect, and never in the world erred in judgment, especially as to such a matter as the distance of two meeting boats are apart in a dark, gray night?

Ans. Well, no; I have never come across that man yet, unless it is a lawyer.

6. Int. Do you know of any higher or better rule of navigation, or one more constantly called for in practice, that that pilot shall do what is necessary to navigate his boat safely and to keep her out of trouble? If so, state what it is?

Ans. I don't know of any; a pilot is the best judge of handling his boat.

391 7. Int. If there is any other way for him to do this except by constant watchfulness and the exercise of his best judgment, as the occasion requires, state what it is.

Ans. I don't know of any other; none.

8. Int. Do or not these inspectors' rules provide for all the varying exigencies or circumstances in which a boat may be placed?

Ans. They do not. The rules are for fair-sailing weather. There are situation' in which a boat may be placed in which she could not comply with the inspectors' rules and be safely handled.

9. Int. Is there anything in rule 10 that require' you to stop or run slow while your short, quick whistles are sounding, and does that rule apply to any case except when the pilot, one or the other, is in doubt as to the signals given, and they are a sufficient distance apart to communicate with one another as they go on?

392 Ans. No; there is nothing in rule 10 that requires you to stop or run slow while your short whistles are sounding. That is all the rule applies to.

10. Int. Would these short, quick sounds tell the pilot ordinarily to stop, or would it do any more than tell him that you wanted to know what his signals were? Isn't it you' judgment, outside of the rule, that tells you to stop, if you do stop?

Ans. These short sounds tell the pilot, if it is in his judgment to stop, to stop. It is his judgment that tell' him to stop, not the rule. The rule don't tell him to stop. These short, quick sounds do no more than to tell him you want to know what his signals are. It is your judgment that tell' you to stop, if you do stop. The rule don't say stop.

11. Int. Where is Joe McCammon at the present time, whom you took off the yawl with a raft that night?

393 Ans. He is on the Alice Dean, I think, as pilot.

R. M. WADE.

By consent of counsel for the parties, the taking of these depositions, completed for the present with Cap. Wade's testimony, after being recalled this 15th day of June, A. D. 1870, is adjourned without a day, and it is agreed by said counsel that the depositions under the annexed notice shall close this 15th day of June, 1870. (Cap. Wade's testimony, after being recalled, is out of its order in time, being here inserted to follow on after his deposition previously taken.)

R. S. FULTON,
Not. Pub. Ham. Co., O.

Adjourned until to morrow, to be resumed at the same place, and between the same hours.

R. S. FULTON,
Not. Pub. Ham. Co., Ohio.

394 OFFICE LINCOLN, SMITH & WARNOCK,
Cincinnati, June 14th, 1870.

The further taking of these depositions is resumed to-day, pursuant to the adjournment of yesterday, above noted.

Present: Mr. Lincoln, counsel for defendants; Mr. Korbly, counsel for the plaintiff, and the notary.

R. S. FULTON,
Not. Pub. Ham. C., O.

Evidence of David Whitten.

DAVID WHITTEN, of sound mind and lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the said cause, deposes as follows:

Examination-in-chief by Mr. Lincoln:

1. Int. State your name, age, residence, and occupation, and how long and where you have followed your occupation.

Ans. My name is David Whitten. I am sixty-six years of age.
395 I reside in Mainville, Ohio. I am a steamboat-captain by occupation. I have been forty-two years on the river. I have been thirty-six years in charge of a steamboat on the Ohio and Mississippi Rivers.

2. Int. What connection had you with the steamboat America on the 4th of December, 1868, and how long had that connection existed; how long had you been connected with the Cincinnati & Louisville Mail-Line Co., and in what way?

Ans. I was captain of her at that time, and had been from the time she first came out a little over a year. I had been connected with the Mail-Line Co. between six and seven years at that time, as a captain of steamboats.

3. Int. Where you or not on the steamboat America when she was burned up on the night of the 4th of December, 1868, and whereabouts on the boat were you at the time of the collision?

396 Ans. *Ans.* I was on her when she caught fire. I was on watch on the hurricane-roof when the collision occur'ed and when she caught fire.

4. Int. Who was on watch in the pilot-house at the time, and was his character for skill, ability, and prudence as a pilot; and who was the steersman on watch in the pilot-house with him at the time, and what was his character as a steersman?

Ans. Napoleon B. Jenkins. He was a good pilot—none better. I think Emanuel Turpin was the steersman on watch with him at the time. He was a very good young man, I thought. He steered very well.

5. Int. How long had Jenkins been in the mail-line trade; how much had he piloted in that trade?

Ans. I only knew him from the time I came there. He was there when I went into the trade, and had been there most of the time since. He was off a little while; went to Illinois once.

397 6. Int. How was the America manned and equipped at the time, as to competent officers and crew, and all things necessary to the safety, security, and comfort of her passengers?

Ans. I think she was manned with all the officers required on a steamboat, and they were as good men as you could find. She was full manned, with a good crew. She was well equipped; had everything required by law and more too. The officers were all at their posts.

7. Int. State what happened to the boat on that night.

Ans. She had a collision with the United States, and was subsequently burnt up.

8. Int. State what took place on the boat a short time before the collision and up to the time of the collision.

Ans. The America blowed two whistles at the usual distance from the United States. I didn't know whether she blowed two or
398 one. I thought may be she had blowed two and I had heard but one at that time. I thought she was near a mile off. It appeared to me to be the usual distance off.

8. Int. What then happened?

Ans. The America blowed two whistles again.

9. Int. And then what?

Ans. Stopped her engines and backed. She backed, I suppose, four or five revolutions. I don't know how many. It is merely guess-work.

10. What then happened?

Ans. The boats came together. They backed right out from one another, and the America went right into shore and landed. I saw the passengers going off the boat, and, I think, most of them got off when we landed. The United States swung round against us and her passengers jumped off her on to our boat, and from then'e to the
399 shore. We backed away, because I thought we could save our boat from burning up alongside of the other boat. The other boat was on fire and the wind was blowing towards the shore up the river and towards us.

11. Int. When you commenced backing out from the shore did you whether or not all the passengers had got off the other boat, and whether all yours had got off? Where did you come in again?

Ans. I did not know. I was not down. I didn't see any jumping ashore at the time. She was run so hard on shore that we were some time in getting her off, and she got afire so badly that we couldn't save her. We came into shore again two or three hundred yards below the United States.

12. Int. At the time you first separated from the United States, was there or not any fire on the America, and for what purpose did you run to shore?

Ans. I didn't see any fire on the America when we first backed
400 away from the States. I didn't see any blaze. There were some little fragments on the forecastle smoking and I threw down some water on it. I was on the hurricane-roof and couldn't see under. We went to shore to let the passengers get off if they wanted to, in case anything serious happened to her. I don't know how badly she was hurt at the time. I couldn't see anything the matter with her at the time; the jackstaff was knocked down.

13. At the time you first begun to back from the shore where was the States, whether she was outside of you and swinging towards you or not? How was she?

Ans. She was on the outside of us and had swung around down against us before we begun to back out. Heer wheel-house came somewhere near ours about the cook-house. She was a little ahead of us; it looked so to me.

14. Int. How many passengers had you on board that trip, and
401 do you know whether some of them were still in their berths when you backed out; if so, where did they get off?

Ans. I don't know how many we had on that trip; don't recollect. I

saw some go off after we made the lower landing. We had a good many passengers on that trip.

15. Int. Where did you and the engineers and the pilots get off your boats?

Ans. We got off at the lower landing. I know I was the last to get off. I went up to the cabin after I had taken off my coat to go off and saw no one there.

16. Int. Where was the America in the river as to low-water mark on the Indiana side when the boats came in collision?

Ans. I think she was near the channel, nearest the Indiana shore.

17. Int. Which side of low-water mark on the Indiana shore, between the low-water mark and the Indiana shore and low-water mark and the Kentucky shore?

402 Ans. I think she was near the channel, about one hundred yards from the Indiana shore.

18. Int. State whether the river ever gets dry where the collision took place?

Ans. No, sir; I know it don't.

19. Int. What, if any, want of the usual precautions or want of care and skill was there on your boat before the collision, so far as you saw or know?

Ans. I could not see any.

20. Int. What endeavors did you make immediately after the collision to save the passengers so far as you could?

Ans. Went right to the shore, landed on the shore, put out a plank so that they could get ashore, and tried to wake them all up.

21. Int. If there was any want of care, skill, or endeavor of the highest degree to get your boat ashore and to save and secure the passengers, state what it was.

Ans. I don't know of any. I think we done all we could do. I
403 havn't thought of anything since that we could have done more than we did do.

22. Int. State what efforts were made on the United States to get their boat into shore and to save and secure the passengers; and if there was neglect whatsoever or want of the highest degree of care and skill on the part of the officers and crew of the United States to get her into shore and save and secure her passengers, state what it was.

Ans. I could see the wheel next to us working to get her into shore. That was all I could see about the engines. I couldn't see any neglect or want of the highest degree of care and skill.

33. Int. What was the experience and ability of Richard M. Wade as captain and Jacob Remline as pilot, with reference to the handling and management of a boat like the States?

Ans. Their reputation is good; I think none better. They are both experienced men and pilots. Capt. Wade is also pilot. They are No. 1 men.

404 24. Int. Where is the channel along there where the collision took place, and what was the custom of those boats going up and down as to running in the channel at that stage of water?

Ans. It is nearest the Indiana shore; the channel is not narrow; I don't know how wide. They always run up that shore when the water is getting down. It was customary to run in the channel with them up and down. Boats the size of the United States and America you can't hold in shoal water; you must run them in the deepest water there is.

25. Int. What sort of a crossing from above Warsaw Point was it to the Indiana shore?

Ans. It was a long crossing—a gradual crossing.

26. Int. How is the crossing from just below Sugar Creek towards the Indiana shore at the place of collision?

Ans. It is a long gradual crossing, over a mile long.

405 27. Int. When Jenkins heard one whistle in reply to his two, if he did not hear one, would he or not have to wait a short time before he could tell whether the signal was going to be one or two?

Ans. They always in blowing whistles on a boat, after blowing one, wait some little time before blowing the other, so the sound will not get confused, and you could hear it plain. He would have to wait a short time, of course.

28. Int. When Jenkins blew his second signal of two whistles, and stopped and backed his boat, was that or not what the circumstances required and in accordance with the usages under the rules? What would it tell Remline to do if he heard but one from *Remline?*

Ans. That was what was required, and in accordance with the usages under the rules; that is as I understand it. It would tell Remline to stop and back his boat.

29. Int. What more or better could the boats do but stop and
406 back under the circumstances to avoid the collision?

Ans. I don't know of anything more or better that could have been done to avoid the collision.

30. Int. What do you know in relation to that part of the river as to good pilots differing in their choice of sides they are to take at that stage of water?

Ans. I see them go either side. Some take one side and some another. In a straight part of the river like that there is no particular side to take.

31. Int. What obstructions are there along there, if any, that would materially tend to throw boats towards the Indiana shore?

Ans. The wreck of the steamboat Tom Scott, lying nearest the Kentucky shore. There is the wreck of a coal-boat a little above there.

Cross-examination by Mr. Korbly:

1. X-int. How wide was the river along where the collision took place?

407 Ans. I suppose 400 or 500 yards.

2. X-int. How wide was the channel at that point at that time?

Ans. I don't know; it was not very narrow.

3. X-int. How close to the Kentucky shore where the wrecks of the coal-boat and the Tom Scott?

Ans. The Tom Scott is a considerable piece out; I never thought to notice how far; I don't know. The coal-boat looks to me to be pretty nearly in the middle of the river.

4. X-int. How near up or down to the point where the collision took place were these wrecks at the time?

Ans. The Tom Scott is a little below where the collision took place—a very little distance below. The coal-boat is a good piece above; I think the coal-boat is about a half a mile or more above.

5. X-int. On what part of the hurricane-roof were you standing at the time the America blew her first signals?

408 Ans. I was alongside of the texas, a little behind the chimneys, on the starboard side, (on the Kentucky side.)

6. X-int. Had you been standing there any considerable length of time?

Ans. No, sir; I had just come out of the texas.

7. X-int. Did you see the United States just before the America whistled; if you did, how far off was she?

Ans. I saw a little dim light. I couldn't see the boat, though. I saw the light before I went into the texas. I went into the texas and came right out again. I didn't know what boat it was until she whistled. I was not exactly certain then, for it was a dim whistle. When I first saw the lights of the boat it was considerable over a mile away. I came out of the texas before the America whistled. She whistled just after I came out.

8. X-int. Which boat whistled first, and how many times did she whistle?

409 Ans. The America whistled first; that I heard; she whistled twice.

9. X-int. Did she blow two long or two short whistles? How much time intervened between the two whistles?

Ans. The America blowed two pretty long whistles; there was some little interval between the two, not long enough so the echoes will get clear.

10. X-int. How long after the signals of the America got clear did you hear the signal of the United States in reply?

Ans. Well, pretty soon; I suppose the interval was not greater than the interval between the two whistles of the America.

11. X-int. How many did you hear in reply?

Ans. I heard but one, but suspected they had blown two; the wind was blowing, and there was a rattling of chains.

12. X-int. What made you suspect there was two when you heard but one?

Ans. Because the America blowed two.

410 13. X-int. Now, if the whistle of the States had been blown at the same identical time that the America was blowing her first whistle the sound of the America's whistle would have drowned that of the States and have prevented you from hearing it at all, would it not?

Ans. The whistle I heard was a little after we had blown ours. I think if they had both blown together they might have drowned one or the other. I think very likely I should have heard the whistle of the States.

14. X-int. Now, state how much time was consumed from the commencement of the first whistle of the America until the second one was entirely over; I mean the two whistles of the first signal.

Ans. It must take a little time, not very long. I don't know. I never kept the time of anything of that kind in my life. I don't know to answer it.

411 15. X-int. How far were the two boats apart when the United answered the signal of the America—the first signal, I mean?

Ans. It was pretty soon after the America blowed her first whistle, and I then thought she was a mile off.

16. X-int. You say that you suspected that there were two signals from the States in answer to two from the America. Did you at the time and before Jenkins signaled the second time, ask Jenkins whether the States had answered his signal correctly or not, or say anything to him about your suspicions?

Ans. I did not; I said nothing about my suspicions.

17. X-int. Did you remain at the same spot from the time of the America's first signal until the time of her second signal?

Ans. Pretty near; I wasn't far from the same place.

18. X-int. How long did Jenkins wait, after hearing the signal of the States, until he signaled the second time?

412 Ans. It wasn't very long from the time he blew the first until he blew the second signal.

19. X-int. Well, how long? State the best of your judgment.

Ans. Pretty quick—pretty short time. I have no time that I could give.

20. X-int. Compared to the interval between the whistles of Jenkins' first signal, how long was it?

Ans. I don't think it was much longer. It was like that.

21. X-int. Did the United States immediately blow one whistle after you blew you' second two?

Ans. Pretty soon after.

22. X-int. How soon after did the collision take place?

Ans. Pretty soon; no man can tell the distance or the minutes or the seconds.

23. X-int. State how far the boats were apart when Jenkins blew his second signal?

Ans. Well, I thought they were over four hundred yards, some-

413 thing about four hundred yards; may be a little over; I still think so.

24. X-int. How fast was*t* the America going just before Jenkins gave his second signal?

Ans. I suppose she was running some 12 miles an hour. I think she was running about the same rate from the time of the first signal of the America, some 10 or 12 miles an hour; I suppose about 12 miles.

25. X-int. How long before the America blew her second signal were you aware or suspected there was going to be a collision, or danger of a collision?

Ans. I didn't suspect anything wrong until after the second signal.

26. X-int. Could not you *not* see that the United States was steering to pass you on the Indiana side before the America signaled a second time?

Ans. No; I don't think that they were. I couldn't see that they were.

27. X-int. Was there anybody else on the hurricane-roof besides yourself?

Ans. I didn't see anybody.

28. X-int. How long was the America?

414 Ans. Three hundred and fifteen feet.

29. X-int. How fast was the America going just at the time of the collision?

Ans. Well, mighty slow. I could not tell how fast.

30. X-int. Which side of the thread of the stream or center of the channel did the collision take place?

Ans. I thought pretty near the center of the channel, little the nearest to the Indiana shore.

31. X-int. State which side of the United States the America struck, how it shoved the United States around, whether with her bow towards the Indiana or Kentucky shore.

Ans. Struck her on the larboard bow, pretty close forward. I don't think it shoved her round much. I think they turned her round with the engines mostly.

32. X-int. Describe how the United States was worked around

415 to the Indiana shore; whether she went straight or with a curve heading up stream.

Ans. She turned round, head up stream, and they worked her in with the inside wheel. Sh' swung around against the America.

33. X-int. State whether the States settled to the bottom of the river before the America backed away from her.

Ans. I think she did.

34. X-int. Where there not planks laid across from the States to the America and people in the act of passing over when she backed away?

Ans. They were getting off the cabin guards. I didn't see any below. I don't think there were any planks across. I didn't see any.

35. X-int. On what part of the hurricane-roof were you at the time—part next to the States or part next to the shore?

Ans. I was on the part next the States, back near the chim-
416 neys, just before we backed away.

36. X-int. How long did the two boats lie side by side?

Ans. But a very short time.

37. X-int. Could not a great many more of the passengers of the States have saved themselves if the America had not backed away from the States?

Ans. I think not. The fire was bursting out the cabin-doors, clear back to the gangway, before she backed away. Nobody could come to the gangway to get out there. She was all afire all along there. The fire was bursting out of the windows.

38. X-int. Could not people backe of the wheel-house, in the stern of the boat, have been saved?

Ans. They couldn't get off the stern on to our boat. Her stern stuck out too far.

39 X-int. Who was in the pilot-house when you gave the order to back?

Ans. I don't thing anybody was in the pilot-house. The pilot
417 had *had* come down out of the pilot-house on the roof where I was Both pilots were there on the roof.

40. X-int. Didn't Jenkins leave the pilot house and go ashore before you backed out?

Ans. No, sir.

41. X-int. Didn't a strange pilot go into the pilot-house of the America and manage her after Jenkins left her?

Ans. No, sir.

42. X-int. Didn't anybody?

Ans. Charley Ditman, the other pilot, did. They were both together there, and I said, "Back her out, for God's sake; she'll burn up right here." Ditman went into the pilot-house. He remained in the pilot-house until he landed the boat below.

43. X-int. With reference to the Indiana shore, how did the United States settle down, whether paral'el*l*, or not?

Ans. I think her bow was a little nearest the shore.

44. X-int. How near to the shore did she settle down?

418 Ans. I think it wasn't more than about thirty yards; may be not that far.

45. X-int. Had not the America, for a considerable length of time immediately before the collision, passed the States as the America was going up on the Kentucky side of the channel?

Ans. I don't recollect. Very likely she had. The river had been falling, and when it was high we passed up the Kentucky shore.

46. X-int. You state in your direct examination that you could not see any want of skill or care in the officers of the United States; now, do you mean to say that there was no want of skill or care, or that you don't know any want of care or skill?

Ans. I don't know any more than I could see. I don't know of any want of care or skill. I know they are good officers, and I didn't see any.

46. X-int. Wasn't the smoke so thick you couldn't see what
419 the officers were doing, and weren't you paying more particular attention to your own boat?

Ans. I couldn't see very well, I assure you. I paid more attention to my own boat, of course.

47. X-int. Look at the paper now handed you, marked "Exhibit A," and attached to this deposition, and state whether what is contained therein in print are not the rules and regulations for the government of pilots, prescribed by the board of supervising inspectors, which were in force on the Ohio River at the time of collision aforesaid?

Ans. I believe it is.

48. X-int. According to these rules, was it not the duty of the pilot of the descending boat to await the signal of the ascending boat, and if the dangers of navigation, darkness of the night, narrowness of the channel, or any other cause, in the opinion of the pilot of the descending boat, rendered it necessary to take the other side, was it not
420 his duty to give the signal of his intention of taking the other side, by crossing the signal of the ascending boat?

Ans. I think it is the duty of the pilot going down stream to blow the whistle if the other boat, in his opinion, is coming too near. It is his duty to do anything to keep his boat out of trouble. I have always understood that rule since I have been on the river, and they had that rule there, that the pilot of the down-stream boat, if in his opinion the ascending boat was coming too near, he had a right to blow first.

49. X-int. Is it not the duty of the pilot of the descending boat not to permit his boat to get too near the ascending boat, in case the ascending boat does not signal in time, by stopping his engines and giving signals of doubt or misunderstanding of signals, according to the 10th of said rules, to the pilot of the ascending boat; and is it not the duty of the pilot of the ascending boat, on hearing such signals of doubt, to stop his boat also?

421 Answer. Persons are very liable to be deceived in distances; what one man would think probable in distance the other would think entirely different. When he finds there are wrong signals, it is his duty to stop her.

50 X-int. You say in yours answer to the 48 X-int. that the pilot of the down-stream boat, if in his opinion the ascending boat was coming too near, he had a right to blow first. I'll ask you if, according to rule 10, it is not his duty in such cases to give the signal of doubt, and, according to rule 2, to stop his engines and back?

Ans. Yes, sir; I believe it is.

Redirect examination by Mr. Lincoln:

1. Re. Do you ever whistle several short sounds in quick succession, under rule 10, except where you have heard the whistle, but doubt that you have heard them correctly?

422 Ans. Not unless we have doubt that we haven't heard them correctly.

2. Re. What possible good could several short, quick sounds of the whistle do, on that night, which was not done by Jenkins blowing the two did? Which, in your judgment, was the most effectual to keep these two boats apart, to blow several quick sounds according to rule 10, or by crossing Remline's whistle with two whistles, as Jenkins did?

Ans. I think the two whistles that Jenkins blew for the second signal, to tell Remline that he could not change his course, and to stop and back, was the most effectual.

3 Re. Were you or not all the time from the time the first signal sounded up to the time your boat landed, the second time, where she burned up, giving strict and careful attention to the navigation of your boat and the safety and security of your passengers?

Yes, sir; I think I done all I know*ed*, and could do, to the best
423 of my knowledge.

4. Re. Were you or not all the time after leaving Warsaw up to the time of the collision between the low-water mark on the Indiana shore and the Kentucky shore?

Ans. Yes, sir; I think we w*as*. I know we w*as*; we kept as near the channel as we could. I was upon the roof.

5. Re. When the States swung around against you, and you gave the order to back your boat out to save her, did you then know that the States was sunk and that she would not be able to get ashore?

Ans. Well, I knowed that she was sinking, for I saw the hole on her bow, but I thought her bow being above us was nearer the shore than it was.

6. Re. Suppose you had stayed there longer than you did, with the flames of the States blowing across you, what, if any, danger would there been to some of your crew, and possibly passengers; how did it appear to you at the time?

424 Ans. It appeared to me that our boat was so badly afire that we couldn't save her where she lay. Nobody could get off the other boat on to our boat at the time we backed out any way.

7. Re. Was there water enough so that either boats could get up to the dry shore?

Ans. Yes, sir; plenty of water to land up again' the shore.

8. Int. From what did the America catch on fire?

Ans. From the United States.

9. Int. Did or not you hope to save her at the time you backed out?

Ans. I was in hopes to save her when we started to back out. Her bow was run up on the shore, and she was stuck very fast. It took some time to back her off.

10. Int. What has been the usage on the river under the rules to which your attention has been directed, as to the pilot of the de-
425 scending boat blowing his whistle first, whenever, in his judgment, safe navigation required it?

Ans. I have seen it done often and often by first-class pilots. It has been the usage.

11. Re. Who was Charles Ditman; how long had he been connected with the mail-line, and what kind of a pilot was he?

Ans. He was a pilot on the mail-boat at that time. I think he had been in the mail-line for 20 years. He was four years captain of the Jacob Strader, and is the oldest pilot now in the mail-line. He was a first-rate pilot; none better.

12. Re. What was the condition of the America at the time he left the wheel that night?

Ans. All the fore part of her was on fire one-half of the boat was all on fire before he left the wheel-house.

13. Re. Is it possible for anybody to give accurate testimony as to time and distances when a boat is approaching you in that way?
426 Have you any means of measuring it or telling with any accuracy when you are a mile or 800 yards apart?

Ans. I don't know any way but guessing at it. I have no means of telling but guessing.

14. Re. What kind of a night was it; was it such a night as boats run at ordinary speed?

Ans. What we call a gray night. Yes, boats could see the landmarks ashore, and could run at ordinary speed. It was a good night, but still not dangerous.

15. Re. What kind of a night was it as to being deceptive as to distances.

Ans. It was a bad night to tell distances; the clouds were low down.

Re-examination:

1. Re. Was it not a bad night to distinguish objects?

Ans. Well, it was rather a bad night, but still we could see our landmarks.

427 2. Re-x. Would it not have been safer to run at less than ordinary speed?

Ans. No; I think it was not too dark for the speed the boats were running?

3. Re-x. Was the America going at her usual and average speed up stream?

Ans. She was not hurrying any. She was not up to her speed. She frequently came to Cincinnati in 10 hours. Her average run up stream was 14 miles an hour.

DAVID WHITTEN.

Adjourned until to-morrow, June 15th, 1870, at same place and between the same hours.

R. S. FULTON,
Not. Public.

CINCINNATI, *June 15th*, 1870.

The further takin' of these depositions resumed to-day, at the office of Lincoln, Smith & Warnock, pursuant to the adjournment of yesterday above noted.

428 There were present Mr. Lincoln, of counsel for the defense; Mr. Korbly, of counsel for plaintiff, and notary.

NOTE.—Captain Wade was recalled, and his testimony, for convenience, is inserted after his deposition previously given.

R. S. FULTON,
Not. Pub. Ham. Co., O.

STATE OF OHIO,
Hamilton County, ss:

I hereby certify that Jacob Remelin, Richard M. Wade, Christopher G. Pearce and David Whitten, witnesses, all residing out of the county of Jefferson, in the State of Indiana, and all residing out of the State of Indiana, all of sound mind and lawful age, witnesses, whose depositions appear above, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth in relation to said cause,

429 according to law; that the depositions by them respectively subscribed as above set forth, were reduced to writing by myself in the presence of said witnesses respectively, and were respectively subscribed by said witnesses in my presence; that the above depositions were taken in behalf of the defendants in the said action, and that the plaintiff, by his counsel, Mr. Korbly, was present during the whole ex-

amination of each and all the witnesses, and cross-examined the said witnesses respectively; that these depositions were taken at the office of Lincoln, Smith and Warnock, over First Nat. Bank, N. W. corner Third & Walnut streets, in the city of Cincinnati, and State of Ohio; that the taking of said depositions was commenced on the 10th day of June, A. D. 1870, at 9 o'clock a. m., and continued by adjournment made by consent of counsel for the parties until the 13th, and from the 13th to the 14th, and from the 14th to the 15th days of June, 1870, as above noted, when, upon the said 15th of June, by consent of counsel for parties, the said depositions closed; that the said depositions were taken
430 between the hours of 8 a. m. and 7 p. m. on each of said days, the closing hour of 6 p. m., in the notice hereto attached, being waived by counsel for the parties; that I am not of counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Witness my hand and notarial seal.

[L. S.]

R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

The pilot rules, "Exhibit A," referred to in and attached to the foregoing depositions, read as follows, to wit:

Pilot rules.

Rules and regulations for the government of pilots.

Revised and adopted by the board of supervising inspectors, October 17, 1865, in compliance with the provisions of the 29 section of act of Congress, entitled "An act to amend an act entitled 'An act to provide for the better security of the lives of passengers on board of
431 vessel propelled in whole or in part by steam; and for other purposes;" approved August 30, 1862.

RULE 1. When steamers are approaching each other, the signal for passing shall be one sound of the steam-whistle to keep to the right and twoo sounds to keep to the left. These signals to be made first by the ascending steamer. If the dangers of navigation, darkness of the night, narrowness of the channel, or any cause render it necessary for the descending boat to take the other side, she can do so by making the necessary signals, and the ascending boat must govern herself accordingly. These signals to be observed by all steamers either day or night.

RULE 2. Should steamers be likely to pass each other and these signals should not be made and answered by the time such boats shall have arrived at the distance of eight hundred yards from each other, the engines of both boats shall be stopped; or should the signals be
432 given and not properly understood from any cause whatever, both boats shall be backed until their headway shall be fully checked, and the engines shall not be again started ahead until the proper signals are made, answered, and understood.

RULE 3. When two boats are about to enter a narrow channel at the same time, the ascending boat shall be stopped below such channel until the descending boat shall have passed through it; but should two boats unavoidably meet in such channel, then it shall be the duty of the pilot of the ascending boat to make the proper signal, and when answered by the descending boat to be as close as possible to the side of the channel the exchange of signals may have determined, as allowed by rule 1, and either stop the engines or move them so as to give the boat

steerage-way, and the pilot of the descending boat shall cause his boat to be worked slowly until he has passed the ascending boat.

433 RULE 4. When a steamer is ascending and running close on a bar or shore, the pilot shall in no case attempt to cross the river when a descending boat shall be so near that it would be possible for a collision to ensue therefrom.

RULE 5. No pilot of a descending boat shall run down any island chute which is not the usual channel of the river except such chutes as are designated by these rules or may hereafter be designated by the board of supervising inspectors.

RULE 6. When any steamer, whether ascending or descending, is nearing a short bend or point, where, from any cause, a steamer approaching in an opposite direction cannot be seen at a distance of six hundred yards, the pilot of such steamer, when he shall have arrived within six hundred yards of that bend or point, shall give a signal by one long sound of his steam-whistle as a notice to any steamer that may be approaching; and should there be any approaching steamer within hearing of such signal, it shall be the duty of the pilot thereof to

434 answer such signal by one long sound of his steam-whistle, when both boats shall be navigated with the proper precaution, as required by proceeding rules.

RULE 7. When a steamer is running in a fog or thick weather, it shall be the duty of the pilot to sound his steam-whistle at intervals not exceding two minutes.

RULE 8. When steamers are running in the same direction, and the pilot of the boat which is astern shall desire to pass either side of the boat ahead, he shall give the signals as in rule one, and the pilot of the boat ahead shall answer by the same signal, and allow the other boat to pass on the side selected, and shall in no case attempt to cross her bow or crowd upon her course.

RULE 9. When boats are moving from their dock or berth, and other boats are liable to pass from any direction towards them, they shall give the same signal as in case of boats meeting at a bend, but imme-

435 diately after clearing the berth, so as to be fully in sight, they shall be governed by rule 2.

RULE 10.—Doubts or fears of misunderstanding signals may be expressed by several short sounds of the steam-whistle in quick succession.

RULE 11.—Steamers descending the Ohio and Mississippi Rivers between Louisville, Ky., and New Orleans, La., shall not run down any island chute, either by day or night, except those herein or hereafter designated unless such chutes are the usual channel of the river.

RULE 12.—The following island chutes may be navigated by descending steamers on the Ohio River, between Louisville, Ky., and Cario, Ill., when the river shall be sufficiently high for them to do so with safety, viz: Blue River Island, Dramond Island, Galconda Island, Sister Island, Stewart's Island, and Cumberland Island, either by day or night, and Wabash Island by daylight only.

436 RULE 13.—The following island chutes on the Mississippi River, between Cario and New Orleans, may be navigated by descending steamers during daylight, when the river shall be sufficiently high for them to do so with safety, viz: Islands Nos. 8, 34, 35, 40, 41, called Paddy's Hen, 46 or President's Island, 65, 75 or Ozark Island, 76, 93, 97, 109 or Palmyra Island, 110 or Big Black Island, 116 or Glasscock Island, & 123 or Profits Island.

RULE 14.—The following island chutes may be navigated by descending steamers during the night when the river may be sufficiently high for them to do so with safety, viz: Islands No. 8, 31, 41 or Paddy's Hen, 65, 76, 93, 97, 109 or Palmira Island, 110 or Big Black Island, 116 or Glasscock Island.

RULE 15.—Ascending steamers are not prohibited from running any island chute.

437 RULE 16.—Signal-lights for steamers under way are provided by law as follows, the same to be carried between sunset and sunrise:

For ocean steamers and steamers carrying sail, a bright white light at the foremast-head, to throw the light through ten points of the compass on each side of the ship, viz: from right ahead to ten points abaft of the beam, and to be visible at least five miles. On the starboard-side a green light, and on the port-side a red light, each to throw the light through ten points of the compass on their respective sides, viz: from right ahead to two points abaft the beam, and to be visible at least two miles. These colored lights to be fitted with inboard screens projecting at least three feet forward from the light, to prevent them from being seen across the bow.

For steamers navigating waters flowing into the Gulf of Mexico, a red light on the outboard-side of the port smoke-pipe, and a green light outboard-side of the starboard smoke-pipe, these lights to show

438 both forward and aft, also abeam on their respective sides.

For coasting steamers and those navigating bays, lakes, or other inland waters other than ferry-boats and those above provided for, the red and green side-lights as prescribed for ocean steamers, and a central range of two white lights, the after-light being carried at an elevation of at least fifteen feet above the light at the head of the vessel, the head-light to show through twenty points of the compass, namely, from right ahead to two points abaft the beam on either side of the vessel, and the after-light to show all around the horizon.

For steamers towing other vessels, the colored lights will be the same as prescribed for ocean steamers, and two white mast-lights shall also be carried vertically, to distinguish them from other steamers, the white lights to show through twenty points of the compass, viz, from

439 right ahead to two points abaft the beam on either side of the vessel. White lights shall always be placed on the extreme outside of the tow on either hand, and also of the extreme after-part of the same.

RULE 17.—A bright white light, not exceeding twenty feet above the hull, shall be exhibited by all steamers when at anchor, between sunset and sunrise, in a globular lantern of eight inches diameter, so placed as to show a good light all around the horizon.

WILLIAM BURNETT,
E. M. SCHIELD,
WM. BRADFORD,
ASOPH S. BEMIS,
J. V. GUTHRIE,
J. J. WITZIG,
ALFRED GUTHRIE,
CHAS. L. STEPHENSON,
HENRY G. HAZEN,
WM. ROGERS,
Supervising Inspectors of Steamboats.

And the plaintiff further read in evidence the deposition of Joseph McCammant and J. V. Guthrie, taken at Cincinnati, December, 1870.

Deposition of Joseph McCammant and James V. Guthrie, taken
440 before me, the undersigned, notary public within and for the county of Hamilton, and State of Ohio, at the office of Lincoln, Smith & Warnock, N. W. corner Third and Walnut streets, in Cincinnati, Ohio, on the 5th & 6th days of December, A. D. 1870, to be read in evidence in behalf of the defendants in a certain action pending in the common pleas court of Jefferson County, and State of Indiana, wherein Charles Alling, admr., is plaintiff, and Thomas Sherlock et al. are defendants.

Deposition of Joseph McCrammant.

JOSEPH MCCRAMMANT, of sound mind and lawful age, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposes as follows:

Examination-in-chief.

Question by James Warnock, esq., of counsel for the defendants.

441 1. Int. State your name, age, residence, and occupation, how long you have followed your occupation, and on what rivers?

Ans. Joseph McCammant is my name, my age is fifty-two, (52,) and I reside in Cincinnati, Ohio. I am a pilot on the river by occupation, and have been on the river since 1831. I have been piloting since 1838 on the Ohio and Mississippi Rivers, from here to New Orleans, and to St. Louis.

2. Int. State whether or not you were on board the steamer United States when a collission took place between her and the steamer America on the night of the 4th of December, 1868, above Warsaw, Kentucky.

Ans. Yes, sir; I was on the United States as a passenger at that time.

3. Int. Where'bouts was your room, and state whether you were awake or asleep at the time of the collision?

Ans. I was sleeping in No. four (4) on the starboard side; No. four from the hall; the hall is in the front part; my room was on the lower floor, first cabin. I was asleep at the time of the collision; the
442 crash of the collision woke me up. I suppose I had been in my bed something like an hour and a half at the time.

4. Int. Did you hear any whistles sounded from either boat before the collision occurred?

Ans. No, sir; the crash of the collision first woke me up.

5. Int. State what you did and what you saw thereafter; what took place when you looked out; explain the situation of the two boats, and their movements afterwards until you got ashore.

Ans. I was awakened up by the crash and went out of my room onto the guard; there I discovered that the America was lying across the bow of the United States; I then went back into my room and awakened Mr. Nelson up who was sleeping in the room with me; we both went out of the room together, the hall to the steps, and there we were stopped by the fire coming up the steps. The front part of the cabin was torn off, the ticket-office; at that time the America was loose from the States and was dropping alongside the States, with her side next to the States, on fire.

443 I went back through the cabin and through the ladies' cabin, and there I saw the America laying below the stern of the United

States. I staid there for some length of time until I got to burning pretty badly, (which I have the marks for,) and then I went into the river. I was in the water some length of time before I got to shore. I went off her cabin guards at her stern; I swam as far as I could and the captain, Wade, assisted me to get to shore, and I owe my life to him to-day. I was the last living soul to reach the shore off those burning boats that night.

6. Int. What was the effect of the blow of the collision upon the position of the United States? If she swung immediately afterwards, state how she swung, how her stern swung.

Ans. From the force of the collision the head of the United States swung up-stream towards the Indiana shore, and her stern swung out down-stream towards the Kentucky shore.

7. Int. Which of the two boats was nearest the Indiana shore when the stern of the States had swung out, as you have described?

444 Ans. The America. When the States had swung out around, the America was between her and the Indiana shore.

8. Int. State whether the swinging of the United States had the effect to draw that boat farther from or nearer to the Indiana shore than she was at the time of the collision.

Ans. The collision had the effect to draw the United States, I should say, from twenty (20) to twenty-five (25) yards nearer towards the Indiana shore, than she was at the time of the collision.

9. Int. You have stated that the stern of the United States swung out towards the Kentucky shore, down the river. Towards which shore did that pull the boat before she was sunk or burned?

Ans. That throwed her head towards the Indiana shore, and her stern quartering towards the Kentucky shore. Her head was towards the Indiana shore and her stern quartering towards the *the* Kentucky shore, when she sunk.

10. Int. On which side of the low-water line in that part of the

445 river did the collision between the two boats take place? On which side of the low-water line did the burning and sinking take place?

On the south of the line the collision took place. The burning and sinking took place on the south side of the line.

11. Int. When you say on the south side of the line, is it not your meaning that the United States was farther from the Indiana shore than the low-water line, or nearer to it than the low-water line, at the time of the collision, burning, and sinking?

Ans. She was south of the low-water line. That part of the river is nearly east and west.

12. Int. How far south of the low-water line did the collision, burning, and sinking of the United States take place? If you noticed the wreck afterwards, state where and what was its position with reference to the low-water line?

Ans. From where she sank and lay, I saw the wreck the next day, and she was lying south of the low-water line, and in a thirty inch (30 in.) stage of water. She would not have been dry. The next evening, after the collision, I came up on the Dumont and went alongside of the States.

446 13. Int. Had the river fallen or risen since the collision at that time?

Ans. I think it was about on a stand.

14. Int. What did you observe as to the amount of water, and as to

the space between the wreck of the United States and the Indiana shore. How much room was there between?

Ans. On Saturday evening, that is, the evening next after the collision, there was water and room enough for a steamboat to pass between the wreck of the States and the Indiana shore. A steamboat the size of the Dumont could have passed between the wreck and the shore.

15. Int. You have said that at a 3-inch stage of water in the river the wreck of the United States would have been dry where it sunk and burned. What stage do you call a 30-inch stage?

Ans. Thirty inches inches in the channel at the shoalest bar between here and Louisville.

16. Int. What do you call a low-water stage, how many inches?

447 Ans. I have seen the river between here and Louisville down to twenty-six inches. It is seldom so low as that.

17. Int. At a twenty-six inches stage of water would the wreck of the States have been dry? Which side of the line would she have been on at that stage?

Ans. She would still lie south of the low-water line.

18. Int. You have stated that when you got off the States into the water, you swam until you were ex'austed, and that Captain Wade then helped you ashore. How far did you have to swim before you got to shore?

Ans. I judge that from where I got off the stern of the States into the water to where I reached the shore with the assistance of Captain Wade was about fifty yards, (50.)

19. Int. Had the States touched the bottom when you left her?

Ans. Yes, sir; she had sunk.

448 20. Int. To what extent had she burned when you left her, and state whether any one left the wreck of the States alive after you did?

Ans. Her cabin had pretty much all burned off her forward and back to the aft end of her. I can't state whether I was the last to leave the States alive or not. I was the last person found to belong to her—the last that got ashore.

21. Int. Look at the pilot rules of October, 1865, particularly rule one (1) and two (2,) and say what meaning and interpretation is given there by pilots with reference to the down-stream pilot's sounding his whistle first, upon meeting a boat. State under what circumstance they do so, if at all.

Ans. Well, it is very often the case that the up-stream boat approaches a litle nearer than we like, and pilots of the down-stream boat as a general rule blows the signal whenever that case occurs.

22. Int. What sort of a night was that of the collision, and how do such nights affect the judgment of pilots as to distance? How much

449 will even good pilots very from each other as to distance on such a night?

Ans. It was a very dark night, rainy night, and there was a heavy wind blowing. On night of that kind, pilots are very apt to be mistaken in their judgment as to the distance they are apart, owing to the darkness and the wind. In a distance of three hundred yards, good pilots will vary from fifty (50) to a hundred (100) yards in their estimate of the distance.

23. Int. Do or not their judgments differ more widely as the distance becomes greater?

Ans. Yes, sir.

24. Int. What have you observed as to whether it sometimes happens

that two pilots blow their signals at the same time? And what effect would that have as to their judgment whether the signals had been given at night?

Ans. I have frequently observed that it frequently occurs that both boats blow at the same time. The effect would be, unless the whistle were blown again and distinctly heard, that it might produce a collision.

450 25. Int. State whether such a thing would cause a misunderstanding between them as to each other's signals, especially after night?

Ans. Yes, sir; it would,

Cross-examination:

Questions by Charles A. Korby, esq., of counsel for plaintiff:

1. X-int. How loud was the crash of the collision and what effect did it have upon the momentum of the boats?

Ans. It was a pretty loud noise. It had such effect on her as to stop her headway, and turn her around head up stream.

2. X-int. What effect did it have upon you with reference to throwing you out of or towards the edge of your bed?

Ans. It wakened me up, and gave me a pretty good jar like.

3. X-int. Did you *and* go out immediately after the shock?

Ans. Yes, sir; without stopping to dress.

451 4. X-int. Towards which side of the river were you when you went out on the guards the first time, and which way was the boat heading at that time?

Ans. The head swung around at that time, so that the starboard side was towards the Kentucky shore. I went out from my room on the starboard guard, the States at that time heading quartering up stream towards the Indiana shore.

5. X-int. Did you see the Kentucky shore at the time, and did you then know it was the Kentucky shore?

Ans. Yes, sir; I saw the Kentucky shore at that time, and I knew it was the Kentucky shore at that time from the position in which the boats lay.

6. X-int. How far, and in what direction from your state-room, did you go, and how long did you remain on the guard?

Ans. I went out from my state-room on the guard, and went forward as far as I could get. I suppose it was fifty (50) feet from the room I was sleeping in that I went. I remained there but a very short

452 time before I went back to my room; I suppose not more than a minute or half a minute.

7. X-int. How long did you remain in your room wakening Nelson?

Ans. I don't think I was in there longer than a minute until I got him out of bed, and he went out of the room with me.

8. X-int. Was it then when you first went into the cabin, that you first discovered the boat was on fire?

Ans. Yes, sir; I went out of my room into the hall, and then first discovered that the boat was on fire.

9. X-int. When you first went on the guards you say you saw the America laying across the bows of the United States. In what direction in the river was she laying; which way was her bow, and which way was her stern?

Answer. The America was lying with her head up stream, and her stern down stream paral'el with the Indiana shore, between the United States and the Indiana shore.

453 10. X-int. How long was it from the time you left you' state-room until you got to the stern of the States?

Ans. Well, it was but a short time after I found we could not get out fo'ward. I went directly back. I couldn't go very fast, for there was so much smoke in the cabin. I couldn't see; I could see some little, but nothing very well. I fell down a couple of times over tables and chairs.

11. X-int. State what direction the passengers were going at the time you were going back.

Ans. Some were trying to get back through the cabin. Some were going outside on to the guards at the middle gangway.

12. X-int. State whether the America, when you saw her from the stern of the United States dropping back, came up alongside the United States again.

Ans. No, sir; she did not.

13. X-int. Do you know whether she was up alongside of the United States more than once, after the collision?

Ans. I can't say from my own knowledge. She was never up
454 alongside the States more than once, after the collision, in my own knowledge.

14. X-int. How far below Eli Ray' house did the collision take place? If you know, state your means of knowledge.

Ans. I couldn't say as to the distance. I don't know how far it was.

15. X-int. Did you see any object directly opposite you on the Kentucky shore that you now recollect, when you first went out on the guards?

Ans. Yes, sir; I saw a small white house, on the Kentucky shore, that was a little above and o'posite where I stood when I went out on the guard. There was a candle or some kind of light in the window.

16. X-int. Did the United States drop down from where the collision took place, before she sank; if so, how far?

Ans. I couldn't say the distance, but I don't think she dropped down more than half the length of herself, after the collision, until she sunk.

455 17. X-int. Were not her engines worked forward after she swung around?

Ans. I couldn't say what her engines were doing.

18. X-int. How could you tell she dropped down at all, and what makes you think she dropped not more than half the length of herself?

Ans. From where she was when I first went out and saw the object and the Kentucky shore, and where the wreck lay sunk, I judged the distance she dropped down was half the length of herself.

19. X-int. Are you acquainted with the channel of the river for three miles above Warsaw to Warsaw?

Ans. Yes, sir.

20. X-int. How far is it from Captain Summon's house to the Warsaw Point?

Ans. Well, I should say it was about two miles.

21. X-int. Suppose a pilot descending the river, while opposite Captain Summon's house, were to see a steamboat coming around Warsaw Point, state whether he would have any difficulty in judging how far off the boat was, even if it was a dark, windy, and gray night.

456 Ans. Well, on a night dark and windy as that was, it would be impossible to tell how far the distance was. You can't, on a dark night, see a boat from abreast of Captain Summon's house coming around Warsaw Point until she gets above the point and out into the middle of the river.

22. X-int. Could a steamboat have been seen at a distance of two miles on that night?

Ans. No, sir; I don't think she could.

23. X-int. What distance, then, do you think a boat could have been seen?

Ans. Well, on that night, dark as it was, and with the wind blowing the smoke the way it did, I don't think a boat could have been seen a greater distance than three hundred yards. The wind was blowing the smoke over the top of the chimney, and perhaps the signal-lights could not have been seen that far on account of the smoke.

24. X-int. At what rate of speed would it have been safe and prudent to run on that night?

457 Ans. Well, the kind of boat the United States was, she would have been safe in making twelve (12) miles an hour down stream.

25. X-int. Taking into the consideration the difficulty of seeing an approaching steamer, would it not have been more prudent to have gone at a less rate of speed than that, when you also take into consideration that a steamer may be approaching you at the same rate of speed, (12 miles an hour,) and how short a time it takes for two boats to meet within three hundred yards?

Ans. I think, under the direction of the men who were running the United States and the other boat, from the experience they have had, the boats would have been safe running at that rate on that night.

26. X-int. Do you pretend to say that there would not have been a less likelihood of collision if the United States had been running not to exceed ten (10) miles an hour?

Ans. Well, I shall say this much, that I don't think it would have been any safer to run at the rate of ten (10) miles an hour that it
458 was a' the rate of twelve (12) miles an hour, if the signals had been properly understood.

27. X-int. Yes. But are signals more likely to be misunderstood on such nights, and are not boats more likely to get too near each other for signaling before the pilots become aware of each other's presence?

Ans. Yes, sir.

28. X-int. Do not the pilot rules require that the signal shall be given and understood before boats approached nearer than eight hundred (800) yards of each other, and is not this required so that the boats can be stopped in case of a misunderstanding of the signals?

Ans. Yes, sir, it is required; and if the up-stream boat does not give the proper signals, then the down-stream boat is required to give its, and the up-stream must govern herself accordingly. This is required so that the boats can be stopped in case of a misunderstanding.

29. X-int. Is it not easier to stop a boat going ten miles an
459 hour than to stop one going twelve miles an hour, and still more easy than to stop one going fifteen?

Ans. Yes, sir.

30. X-int. Will you explain, then, why it is not more prudent to go ten miles an hour that twelve miles an hour on such a night?

Ans. That owing a good deal to the kind of a boat you've got to handle, and the power you've got to handle her with.

31. X-int. In what distance could the United States, going down stream at the rate of fifteen miles an hour, have been brought to a stand still?

Ans. She could have been checked up in fifty yards; brought to a stand-still, I mean.

32. X-int. State whether there is a bar between Eli Rayl's house and the Warsaw Point. If there is, which side of the river is it on, and what is the length and width of it?

Ans. There is a small gravel bar comes out above the Warsaw Point

on the side of the Kentucky shore. It it not very wide and not
460 very long. I couldn't give the exact width or length of it.

33. X-int. Is there not a bar on the Indiana side from ten to fourteen hundred feet long between Eli Rayl's house and the place where the America landed?

Ans. No, sir; there is no bar there at all; there is nothing there but the main shore. If there is, it has come there since I came up the other day.

34. X-int. Describe the course and direction of the channel from Rayl's house to the Warsaw Point.

Ans. We go down the channel close to the Indiana shore for some distance below Rayl's house, a distance of about, I suppose, four hundred, (400,) and then we go across to the Kentucky shore above that point—in low water we go nearly square across—and then we follow the Kentucky shore down to that point, where there is a depth of three fathoms, (18 feet.) We run nearly straight, making a very small angle.

461 35. X-int. What do you understand by "low-water line?"

Ans. I can answer that in this way: a low-water line, as I understand it, is the line where the water meets the bank at it' lowest stage.

36. X-int. Do you know how deep the water was where the United States sunk on that night? If so, state.

Ans. No, sir; I do not.

37. X-int. What was the stage of the river that night?

Ans. About thirteen (13) feet; it might have been a little more or a little less. It would not vary much from that.

38. X-int. State on which side of the center or thread of the river the collision took place.

Ans. On the north of the center or thread of the river.

39. X-int. What was the lowest stage of the Ohio River between Cincinnati and Louisville that you have ever known; when was it?

Ans. Twenty-six inches; it was in the fall of 1838.

462 40. X-int. Have you seen it every dry time since 1838, to know the stage of the water?

Ans. Yes, sir.

41. X-int. What was the lowest stage between the said points in 1869?

Ans. It was a little less than three feet in 1869. What we call about 34 inches.

42. X-int. How often did you see the wreck of the United States after you saw it on the Dumont next day, and when?

Ans. That was the only time I saw it.

43. X-int. At the time you saw her from the Dumont did you direct your attention with reference to whether the wreck was above or below low-water mark?

Ans. Yes; I took particular notice of her; she laid south of the low-water line.

44. X-int. How came you to do so?

Ans. By the distance she was from the shore.

45. X-int. According to the pilot-rules which boat must signal first?

463 Ans. It is the up-stream boat's place to give the first signal; at the same time, if I was going down stream, and she omitted to do so, I would signal to her.

46. X-int. When and by what means would you know she had omitted to signal?

Ans. If I hadn't heard her whistle when I came in proper distance, I would then signal myself.

47. X-int. Would you consider it good piloting to signal first, going down stream, before you had got in proper distance?

Ans. Yes, sir; if she wasn't in her proper place, it would be my duty. I would consider it good piloting, and all good pilots do it. I will do it as long as I pilot.

48. X-int. Rule 1st requires the pilot of the up-stream boat to signal first. Isn't it the duty of the down pilot to give him a chance to do it?

Ans. He gives him a chance to do it provided he does it in a proper time. If he do's'n't do it, it is then his duty to signal, and the up-
464 stream boat must be governed by the down-stream boat's whistle.

49. X-int. That is, the down-stream pilot must wait until, in his judgment, it is the proper time for the up-stream pilot to whistle, and then, if the up-stream pilot don't whistle, the down-stream pilot may?

Ans. Yes, sir.

50. X-int. What is the proper time for the up-stream pilot to whistle?

Ans. Well, as a general rule, from two to three hundred yards apart. It will vary a little along; sometimes more, sometimes less.

51. X-int. Were you ever in the employ of the Mail-Boat Company; if so, when?

Ans. No, sir; I never was in the employ of the Mail-Boat Company.

By consent of counsel, the defendants' counsel asks the following questions:

Direct examination:

465 1st int. After the collision took place and the fire broke out, state whether or not it would have been possible to have saved those boats from destruction, in your judgment.

Ans. I think it would have been impossible to have saved either one of them.

2. Int. State whether or not the officers of boats, so far as you could see, used every effort to save the boats and passengers.

Ans. So far as I could see, they done everything they possibly could do to save the boats and passengers.

3. Int. Whenever boats are meeting at that place, and at that stage of water, is there any fixed side for eithe' to take, going up and down the river, or do they take sometimes one side and sometimes another?

Ans. There is no particular side at that place or stage of water that boats pass. They take sometimes one side and sometimes another.

4. Int. Do you know Captains Whitten and Wade, and pilots N. B. Jenkins and Jacob Remelein; if so, how long have you known
466 them, and state if you know what is their reputation as commanders and pilots, respectively, for prudence, care, and skill?

Ans. I know them; am well acquainted with all of them. I have known Captain Whitten ever since I went on the river. I have known Captain Wade since 1835 or 1836. I have known Mr. Remelein for about 26 years. I have known Mr. Jenkins for about 15 or 16 years. Their reputation has always been very good, to the best of my knowledge.

2nd cross-examination:

1. X-int. Do you know whether or not the United State' and America had been passing each other at or near that place, in a regular way, before the collision, the up boat taking the Indiana side, and the down boat the Kentucky side?

Ans. No, sir; I do not.

2. X-int. Were you in company with Captain Wade or Jacob Remelein, the pilot, on that night before retiring to your state-room;
467 if you was, state what part of the boat it was and what were they doing?

Ans. I saw Captain Wade when I was eating supper, and after supper I saw Mr. Remelein; was in the pilot-house with him for a few minutes; that was the last I saw of them until after the accident.

JOSEPH McCAMMANT.

The further taking of these depositions is adjourned until to-morrow, December 6th, 1870, at 9 o'clock a. m., to be then resumed at the same place.

R. S. FULTON,
Notary Public, Hamilton County, Ohio.

OFFICE LINCOLN, SMITH & WARNOCK,
Cincinnati, Ohio, Dec. 6th, 1870.

The further taking of these depositions is continued to-day pursuant to the adjournment of yesterday, above noted. Present James Warnock, esq., of counsel for defendants; Charles A. Korbly, esq., of counsel for plaintiffs, witness, and notary.

R. S. FULTON,
Notary Public, Hamilton County, Ohio.

468 *Deposition of James V. Guthrie.*

JAMES V. GUTHERIE, of sound mind and lawful age, being first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows, to wit:

Examination-in-chief.

Questions by James Warnock, esq., of counsel for the defendants:

1. Int. State your name, age, and residence, and what experience you have had in steamboating; in what capacity, and on what waters?

Ans. My name is James V. Gutherie. My age is sixty-two (62.) I reside in Urbana, Ohio. I have had forty years' experience in steamboating as engineer, captain, and pilot, on the waters of Lake Erie, Ohio, & Missi'ppi, and all their tributaries; the Gulf of Mexico, and the Alabama and Chattahoochie Rivers.

2. Int. State whether or not you were a member of the board of supervising inspectors, which raised and adopted the pilot-rules
469 dated October 17th, 1865, which are now shown you; if so, state how long you were a member of that board; state over what territory or waters your own jurisdiction extended.

Ans. I was a member of that board about three years and a half. My jurisdiction extended from Madison, Indiana, on the Ohio River, including all the territorys to the mouth of the Ohio at Cairo; the Mississippi to the mouth of the Arkansas, including all tributaries and the Arkansas River.

3. Int. Look at the first and second rules of that date, and state whether you are familiar with the construction and interpretation put upon them by that board of supervising inspectors and by good pilots generally. If so, state what it was with reference to whether, under all circumstances, the down-stream pilot must wait for the up-stream pilot to sound the signal first on meeting, or state what circumstances, if any,

would permit the down-stream pilot to signal first according to that interpretation?

Ans. I am familiar with the construction and interpretation
470 put upon them by that board and good pilots generally. In January, 1867, at the annual meeting of the board of supervising inspectors a memorial was sent in to have those rules altered; a debate was had upon them and we refused to alter them, not deeming it good policy to do so.

Rules 1st and 2nd make it imperative on the pilot of the ascending boat to give a signal to the descending boat at a distance of eight hundred yards. It is the duty of the descending boat to answer that signal, and if the descending pilot deems it necessary to take his choice of sides of the river he can do so, and the ascending boat must accept his proposition. There is sometimes steamboats meeting in the river in turning points when they do not discover each other at a distance of eight hundred yards; in that case the descending boat having received no signal from the *de*scending boat, and in other cases where the descending boat has not received the signal within eight hundred yards, the descending pilot has the right to make the signal for the choice of sides, and in case of doing so he must stop his engines and be prepared to back his
471 boat. This explanation I have invariably given to pilots applying for license.

4. Int. The distance of 800 yards is mentioned in the rules and in your answer. How are pilots to decide when that distance has been reached? And state whether or not there is often a wide *distance* in the judgment of pilots as to distance.

Ans. They go by their own judgment. They have nothing else to go by. There is often a wide difference in the judgment of pilots as to distance. They will vary from one hundred to three hundred yards in estimating the distance of a mile. There is more dif'iculty in estimating the distance after dark. Take a gray night, when it is cloudy and a little drizzly, and the wind blowing, it is extremely dif'icult to make the distance. The lights look sometimes as if they were within two or three hundred yards of you, when in fact they may be a half mile off. I have often been so deceived myself, and they will often look to be a half mile off, when in fact they are within two or three hundred yards.

472 5. Int. Then, I understand your interpretation of these rules to be this, that when an up-stream pilot think' he has come within a distance of 800 yards or a little more than that, he is to sound first, and if the down-stream pilot has heard no signal he is to sound first, after he thinks he ought to have heard one; and if the signals are crossed both will stop and back, and do what in their judgment is necessary to avoid a collision? Am I correct?

Ans. Yes, sir; that is correct. It becomes a matter depending upon their own judgment.

6. Int. Would it, in your judgment, be safe to have any printed rules so positive and inflexible as to prevent a good pilot from exercising his sound judgment and discretion in handling a boat, and his signals especially, after night?

Ans. The safe rule is to adhere to the printed rules, but in a case of confusion or where there is a misunderstanding, it would be ruin-
473 ous to have a rule so positive as to deprive a pilot of the exercise of his judgment.

7. Int. Must he or not exercise his judgment in estimating the distance to blow even before there is any disagreement?

Ans. Oh, yes.

8. Int. What have you observed with reference to a signal of a boat not having been heard by another boat; and what with reference to two signals being drowned in each other, when they both think they have come within a proper distance of each other?

Ans. There is a difference in the observation of signals in day-time and at night, when the wind is blowing. It often occurs in daylight when the wind is blowing from you that you do not hear the whistle, but know the signal has been made by seeing the steam arise from the whistle. At night the sound is frequently carried away from you by the wind, and you have not the advantage of seeing that the signal has been made by seeing the steam. Again, sometimes two boats will sound their whistles at the same time, and the sounds will drown
474 each other. In the day-time you can know this by seeing the steam, although you can't hear the sound; at night you can neither see nor hear it.

9. Int. Are you acquainted with Captains Whitton and Wade, of the Louisville Mail-Line, and with Pilots N. B. Jenkins and Jacob Remelein? If so, how long have you known them? And, if you know, state what reputation the' bear as commanders and pilots, respectively, for prudence, skill, and care.

Ans. I am acquainted with all of them. I have known Whitten about thirty years, and Wade about twenty-five. I have known Remelein about twenty years and Jenkins about fifteen. I have always looked upon them as No. 1 men as commanders and pilots, respectively. They have always stood that way, at the top of their profession. I have boated with them all.

Cross-examination:

Questions by Charles A. Korbly, esq., of counsel for plaintiff:

475 1. X-int. How long has it been since you were actively engaged on the river?

Ans. I quit active employment on steamboats in the year 1858, and accepted the position of local inspector at the port of Cincinnati, which I held until the year 1865, when I accepted the position of supervising inspector, which I held until the year 1868.

2. X-int. What was the alteration of rules 1 and two which the board of supervising inspectors, 1867, refused to make?

(Question objected to, because the memorial refer'ed to, containing the probosed alteration, was in writing.)

Ans. My recollection is, that one of them was to change the wright of the up-stream boat to make the first signal, and give it to the down-stream boat. Another was to increase the number of signals. Some of them I can't recollect.

3. X-int. Does not rule 2 require that the signal shall be made and answered by the time the boats shall have arrived at a distance of 800 yards from each other; and does it not follow when boats are ap-
476 proaching each other at a combined rate of speed of from 26 to 28 miles an hour that the ascending boat must commence to signal at a considerably greater distance than 800 yards?

Ans. Yes, sir; it requires that the signals shall be made and answered before they get within eight hundred yards; that is, if they see each other—if they discover each other within that distance. Of course, they could not signal unless they see each other. It does not follow that the ascending boat must commence the signal at a considerably greater distance than 800 yards. The rule is imperative on him to whistle at eight

hundred yards; he may do so before, if in his judgment it be best, but it is left to his judgment.

4. X-int. Going at that rate of speed, if the ascending pilot was to commence to below at 800 yards, would not considerable time elapse before the signal was answered, and would not two boats be consequently nearer each other than 800 yards?

477 Ans. The boats would approach, probably, within 600 yards of each other before the whistle would be fully answered. Sometimes not so near, if the signal was promptly answered. They would go about two hundred yards before the signal would be answered.

5. X-int. Does not rule 2nd require that the signal shall be given and answered before the boats get within 800 yards? How can this be done, if the pilot of the ascending boat does not begin to signal at least 1,000 yards distant?

Ans. It does not. The meaning of the rule is, that the ascending boat must signal at a distance of 800 yards. The other boat cannot answer the signal until it has received it from the ascending boat; consequently the' would be nearer together than 800 yards. Any deviation from this rule would cause confusion and accident.

6. X-int. Would it be prudent and careful for a pilot of a descending boat, going at the rate of 15 miles an hour, the river being 15 feet in the channel, to signal an ascending boat first, when in his judgment

478 the ascending boat was farther away than 800 yards?

Ans. No; it would not. It would be a cause for removing his license. He would have no right to do so.

7. X-int. Is it not the duty of a pilot, in a gray, cloudy, windy night, when he knows, or ought to know, that he is liable to be deceived in the distance of an approaching boat to the extent named in your answer to question 4 of the direct examination, to run the boat at a moderate rate of speed, and to exercise greater caution than ordinarily?

Ans. I wouldn't like to say it was his duty. It would show a greater degree of prudence. What the law does not make his duty I would not like to say it was his duty. That is a matter for his judgment.

9. X-int. You do not mean to say that a pilot could run his boat at such a rate of speed and on such a night as to endanger the lives of his passengers, and be guilty of a violation of duty, simply because the law and the rules are silent on the subject of speed?

(Question objected to.)

479 Ans. I mean to say this: a pilot receives his license from a United States officer yearly, under his oath; in that oath he swears to observe the rules and regulations governing pilots, and to act with his best skill and judgment for the safety of the lives of his passengers; any deviation from this obligation on his part would be a cause for the revocation of his license. I do not mean to say what is implied in your question.

9. X-int. Would not a careful and prudent pilot, in your judgment, (running a boat as large as the United States was before she was burned,) go more slowly on a deceitful night, such as you have described in your answer to question 4 direct examination, than he would under ordinary circumstances?

Ans. As a general thing he would not; if he was expecting or knew he was about to meet a boat, he would, a prudent pilot would.

10. X-int. The right of the descending pilot to give the first signal is limited to cases where the pilot of the ascending boat from neg-

480 lect, accident, or mistake, fails to signal when in the judgment of the descending pilot he is at the proper distance to do so, and this

depends not upon the printed rules, but upon the customs of pilots and the necessities of the case; does it not?

(Question objected to.)

Ans. The right does law with the de'cending pilot, in which case he stops his engines and prepares to back his boat, and is in the printed instructions given to him with his license; it is not in the printed rules and regulations. I don't mean to say he has the right to do that outside the 800 yards.

11. X-int. Would it be prudent and careful in the pilot of the ascending boat, who had signaled a descending boat at what he thought a proper distance on a gray, drizzly, cloud' night, with a strong wind blowing towards the descending boat, from him, to continue at a speed of 12 miles an hour until hearing an answer to his signal and without blowing again until the boats in his judgment were five hundred yards apart?

(Question objected to.)

481 Ans. It would not be prudent.

12. X-int. What ought a prudent and careful pilot of an ascending boat to do on such a night, if he were to signal a descending boat at a proper distance (say from 800 yards to a mile) and not hear an answer in the proper time?

Ans. Run his boat slow when he gets inside of 800 yards and signal again for an answer.

Re-examination:

1. Re. You have been asked various questions upon the suppositions as to the manner in which such boats as the America and United States should be handled and their whistles blown when meeting on such a gray, drizzly night; now under such circumstances whose judgment is best as to what ought to be done at the time, and whose judgment must be relied upon in such circumstances?

Ans. The pilots at the wheels of the boats and the captain looking out at the time.

482 2. Re. Is there any particular side that steamboats like those would take in a stage of 14 or 15 feet of water at a distance of about two miles above Warsaw; or is there a difference of the practice of good pilots with reference to selecting sides?

Ans. The ascending boat would generally keep nearer the Kentucky shore; pilots sometimes vary and take either side.

J. V. GUTHRIE.

STATE OF OHIO,
County of Hamilton, ss:

I, Robert S. Fulton, a notary public within and for said county and State, do certify that Joseph McCammant and James V. Guthrie, the above-named deponents, were by me first severally sworn to testify to the truth, the whole truth, and nothing but the truth, in the case now pending in the court of common pleas of Jefferson County in the State of Indiana, wherein Charles Alling, administrator of Otis B. Sap-
483 pington, deceased, is plaintiff, and Thomas Sherlock et al. are defendants; that the said depositions were all written by me, and that the said deponents both subscribed their respective depositions after the same had been carefully read over to them; that the adverse party, the plaintiff, by Charles A. Korbaly, esq., his attorney, was present at the taking of said depositions; that all of the said depositions were taken at the law office of Lincoln, Smith and Warnock, in the city of Cincin-

nati and State of Ohio, between the hours of 6 o'clock a. m. and 6 o'clock p. m. of said days, agreeably in all respects to the annexed notice.

In testimony whereof I set my name and affix my notarial seal, at Cincinnati, Ohio, this 7th day of December, 1870.

[L. S.] R. S. FULTON,
Notary Public, Hamilton County, Ohio.

Evidence of Edward Mead.

EDWARD MEAD testified as follows:

484 I am in the drug business. Coal-oil will, as a matter of fact, ignite and burn upon the surface of cold water. I have made the experiment myself, and found it would burn on the water when ignited.

On cross-examination he said:

I would rather think the coal-oil could be ignited and would burn on the surface of the water.

Redirect:

If a quantity of coal-oil, 20 to 25 bbls. were broken upon a deck and ignited, and were to run overboard on the water I think it would burn.

And the plaintiff rested.

And the plaintiff having rested, the defendants, to maintain the issues joined on their part, *and* offered and read as evidence the following depositions taken at Cincinnati on Feb'y 14th, 1871, and succeeding days of the following witnesses, to wit, Charles J. Marshall, Oliver P. Tharp, David Whitten, Stappleton Dansford, James Holmes, A. J. Howagan, Oliver H. Noble, Oliver Palmer, Jacob Remelein, Thos. F.
485 Eckert, Oliver H. Noble recalled 2 days after. Charles Alling, administrator of Otis B. Sappington, deceased, is plaintiff, and Thomas Sherlock et al. are defendants.

Deposition of Charles J. Marshall.

CHARLES J. MARSHALL, of sound mind and lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

(Plaintiff's atty. objected to the examination of this witness under the notice.)

Examination-in-chief:

Question by T. D. Lincoln, esq., of counsel for the defendants.

1. Int. State your name, age, and residence, and what connection, if any, you have had with the steamer United States at the time she was lost above Warsaw, on the night of the 4th of December, 1868.

Ans. Charles J. Marshall is my name. My age is thirty. I reside in Madison, Indiana. I was second engineer on the United States, and on watch at the time.

2. Int. Where were you standing at the time, and what do you
486 know, if anything, of the relative direction in which the boats came together? How did they strike each other, if you know, and how do you know?

(Plaintiff's atty. objected to the above question.)

Ans. I was standing on the foot-board of the starboard engine at the time of the collision. They struck nearly head on. It wasn't head on, but nearly head on. As soon as I heard the collision I shoved the window. We have a window alongside, and I shoved the window so that I could look out, and I saw the America.

3. Int. What part of the America did you see from the place where you stood, and had the boats at that time separated, or were they still sticking together?

(Plaintiff's atty. objected to the above question.)

Ans. I could see the after part of the wheel-house, and from there to her stern. I could see part of her name on the wheel-house. The boats were sticking together when I first looked out and saw the America's name and stern.

487 4. Int. Will you state whether it was or not possible, from the shape of the boats, for you to have seen the after-part of the name of the America from the place where you were standing unless the boats came together nearly head on? What must have been the position of the boats for you to have seen from where you stood the after-part of the name of the America?

(Plaintiff's atty. objected to the above question.)

Ans. No, sir. I couldn't have seen the name of the America unless they had come together nearly "head on." They must have been nearly "head on."

5. Int. Will you mark on this diagram attached to Mr. Turpin's depositions marked Exhibit "A" the place where you stood when you looked out of the window and saw the name of the America, as you have described. Mark the place where the window was on the States, and the part of the America you saw?

(Plaintiff's atty. objected to the above question, and also to the diagram or plat heretofore introduced being altered or added to.)

488 Ans. The window of the States I refer to was, I think, about where I have marked it, and the part of the America I saw was where I have marked it. It was at about the widest part of each boat.

6. Int. From the way in which the boats came together, and the position in which the America's bow was in the United States, what effect, if any, could the blow or collision have in pushing the bow of the States further in toward the Indiana shore?

(Question objected to.)

Ans. I don't think it could have any effect in pushing her towards the Indiana shore.

7. Int. Could or could not you have seen what you did if the bow had been crowded in towards the Indiana shore?

(Question objected to.)

Ans. No, sir; I could not.

8. Int. How did the window look out, in front or on the side of the boats; and opposite what part of the foot-box was it?

(Question objected to.)

Ans. The window was on the side of the boat. I could put
489 my head out of the window and look fo'ward. The window was opposite the fo'ward end of the foot-box, opposite the fo'ward end of the engine.

9. Int. At the time the boats came together what was being done with the engines, and what was done at the engines as soon as the boats backed away from each other?

(Plff's atty. objected to the above question.)

Ans. The engines were backing strong at the time of the collision. When the boats backed away from each other the larboard engine stopped backing, and fo'ward, while the starboard engine was backing.

10. Int. What effect did that have, and what did you continue to do until the time the boat sunk, and for what purpose?

(Plaintiff's atty. objected to the above question.)

Ans. It twisted the boat around, head towards the shore. As soon as she was headed towards the shore we stopped backing on the starboard engine, and came ahead on both engines, trying to get to shore.

11. Int. How did you go ahead; whether strong or otherwise?

(Objected to.)

Ans. We went ahead strong.

490 12. Int. How much nearer to the Indiana shore did you get before she sunk than you were at the time of the collision?

(Question objected to.)

Ans. I can't tell.

13. Int. State as near as you can, judging from the number of revolutions your engines made.

(Question objected to.)

Ans. I judge she got about fifty yards nearer at the time she sunk than she was at the time she struck; fifty yards at least.

14. Int. What, if any, want of care or the highest degree of skill was there, so far as you know? (Suppressed.)

15. Int. Did you observe the States after she sunk, & after the water fell; and did you measure the height of the stanchions where they were burned off above the water at the time she sunk? If so, state how high then were.

(Objected to.)

Ans. I saw the boat after the water fell, and I measured the depth of the water on her decks at the time she was burned. I measured not only the stanchions, but how far down the fire burned on the

491 machinery. I have forgotten ho' high they were. Let me see. I believe they were four feet nine inches—nine or ten inches; I have forgotten which—above her decks.

16. Int. Do you know whether or not the river ever gets dry where she sunk? If so, how is it?

(Objected to.)

Ans. Well, I couldn't saw whether the river ever gets dry there or not. I am not sure about that. I don't think it does, though I don't have as good a chance to tell about that as a pilot does.

17. Int. How long have you been running in that trade and how often do you pass that place?

(Objected to.)

Ans. About five years. I pass that place every day.

18. Int. Who was on the watch in the pilot-house at the time as pilot, and whose watch was it *it* on the hurricane-roof with him at the time, and what was their experience, ability, and character for skill and prudence for their several positions?

(Question objected to.)

492 Ans. Mr. Remelein, and it was Captain Wade's watch on the roof with him. They were both good men and old and experienced steamboatmen.

Cross-examination:

Question by J. G. Douglass, esq., of counsel for plaintiff:

Plaintiff' attorney excepting to all matters in the foregoing deposition, cross-examination as follows:

1. X-int. What is your present employment and in whose employ?

Ans. I am second engineer on the United States, and in the mail company's employ.

2. X-int. How long and during what time have you been in the mail company's employ?

Ans. I have been in the mail company's employ about three years and a half; during all that time.

3. X-int. In your position, where was your station and what was your duties at the time of the accident?

Ans. I was stationed about the engines with the engines and boilers, and my duty was to attend to the water in the boilers
493 and to the steam, and see to the machinery; see that ever'thing was right.

4. X-int. Where was the first engineer at the time of the accident?

Ans. He was off watch and in bed.

5. X-int. Who else besides yourself was superintending the engines at the time of the accident?

Ans. No one. I was superintending the engines, but I had an assistant to help me.

6. X-int. What was the name of the helper; was he an engineer, and what work was he doing at the time of the accident?

Ans. Charles Basworth; he was an engineer; he was attending to the machinery at the time.

7. X-int. Where does he reside, to the best of your knowledge?

Ans. He resides with Mr. Lane, of the firm of Lane & Bodly, back of Cincinnati somewhere.

8. X-int. How long had he been with you as helper before the accident?

Ans. About seven or eight months; I don't remember the exact time.

494 9. X-int. How were the doors around the house, open or closed?

Ans. They were closed.

10. X-int. Were they closed when the accident occurred?

Ans. They were closed at the time of the accident.

11. X-int. How was the night, warm or cold?

Ans. It was a very cold night.

12. X-int. Did you look out that night?

Ans. Yes, sir.

13. X-int. Did you testify in a case in the superior court of Cincinnati wherein Thomas Sherlock was plaintiff and the Cincinnati Insurance Company was defendant, as witness?

Ans. Yes, sir.

14. X-int. In that case did you not testify "I didn't look out that night."

Ans. I don't know whether I did or not. It has been so long ago. I don't remember what I did testify.

495 15. X-int. As soon as the collision occurred, how long did you stay in the engine-room after the collision?

Ans. I staid in the engine-room until she sunk. The water was about two feet over her decks.

16. X-int. What did you then do?

Ans. Jumped in the river and swam ashore.

17. X-int. After you went on shore, how long did you stay on shore until you went to another place and dry your clothes?

Ans. I went to a house in about fifteen minutes after I got to shore. I didn't get my clothes dry on me until about twelve o'clock the next day.

18. X-int. To whose house did you go if you recollect the name?

Ans. To Rayl's house.

19. X-int. How long did you stay at Rayl's house?

Ans. About fifteen minutes.

20. X-int. Where did you then go?

Ans. Went to where the boats were burning—down the river.

496 21. X-int. When was this you went down to the boats burning, the time of day or night, and the hour?

Ans. About half-past twelve or one o'clock on the night of the 4th.

22. X-int. When did you leave the wreck after the night of the 4th?

Ans. About four o'clock on the night of the 4th.

The further taking of these depositions is by consent of the counsel for the parties here adjourned until to-morrow, Thursday, February 16th, 1871, to be then resumed at the same place and between the same hours.

R. S. FULTON,
Notary Public, Hamilton County, Ohio.

OFFICE LINCOLN, SMITH AND WARNOCK,
Cin'ti, Feb'y 16, 1871.

The further taking of these depositions is resumed to-day, pursuant to the adjournment of yesterday above noted.

R. S. FULTON,
497 *Notary Public, Hamilton County, Ohio.*

Cross-examination of Mr. Marshall resumed:

23. X-int. How far with your boat running down stream at the rate your speed, and the current, at that night, would it take you to stop the forward motion of the boat, and make the boat stationary?

Ans. Well, I think she could have been stopped and made stationary, at the rate the current was that night, insight of three hundred (300) yards.

24. X-int. How many revolutions did the engines make before the whistles were sounded?

Ans. About seventeen (17) a minute, I think.

25. X-int. Did you hear any whistles from the America that night?

Ans. I did not.

26. X-int. Was this, in the ordinary runs of the boat, the usual place of meeting?

Ans. Yes, sir; about the usual place.

498 27. X-int. About the time of the accident, was you in that condition of mind that you could properly calculate time by minutes?

Ans. No, sir; at that time a minute would seem a long time.

28. X-int. Did you see the surface of the river on fire after the accident?

Ans. Yes, sir; from 20 to 30 feet out from the boat the surface of the water was on fire; that is, out from where I jumped into the river.

29. X-int. Do you know at any time of coal-oil or any inflam'able oils being shipped on your boat from Cincinnati?

Ans. I didn't know of any coal-oil being shipped that night on the boat, the night of the collision; I have known of coal-oil being shipped on the boat at times before that.

30. X-int. How much is the largest amount you have known a boat to carry at one time?

Ans. I don't know what they carry; sometimes 2 or 3, and sometimes 20 or 30 barrels setting around on the boat; I don't know; it is simply guess-work.

31. X-int. Was there any snow or sleet that night?

499 Ans. I don't know whether there was or not. I couldn't see.

32. X-int. How was the wind blowing?

Ans. It was blowing pretty hard. I don't know from what direction; at the time of the fire it was quartering towards the Indiana shore.

33. X-int. What was the last order you got in regard to the movements of the engines?

Ans. Stop from going ahead.

34. X-int. In your testimony in the superior court, did you not state: "And then both went ahead; the' both made eight or ten revolutions ahead until she sank, and then the engines could do no more good?"

Ans. I so stated, and I believe that to be correct.

Redirect examination by Mr. Lincoln:

1. Redirect int. In your cross-interrogatory 14 you were asked if you didn't say, "I did not look out that night;" and you say, "you don't remember, it was so long ago." I will ask you if you did not state on that occasion, "As soon as I felt or heard the collision, I looked out and saw the America; she was sticking into the United States with

500 her bow;" and if any statement of the kind was made "that you did not look out," to what must it have refer'ed?

(Question objected to by counsel for plaintiff.)

Ans. It must have refer'ed to the time before the collision. I think I did make such a statement on that trial.

CHARLES J. MARSHALL.

Deposition of Oliver P. Thorp.

OLIVER P. THORP, of sound mind and lawful age, by E. T. Fries first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Examination-in-chief:

1. Int. What connection had you with raising or endeavoring to raise the steam'r United States, after she was sunk and burned in December, 1868; also with the subsequent rebuilding of the boat?

(Question objected to, and the examination of the witness by the counsel for the plaintiff.)

Ans. I was sent for by somebody, I don't know remember who, to

501 take some men, go aboard of the Champion, and go down to the wreck. I took several men, and what I considered necessary material, and a barge, and a coal flat. When we went out of the mouth of the Licking it was blowing heavy, and continued to blow, so that it detained us until we arrived next evening. That night it turned very cold. The river commenced rising. I got a dispatch that the river was rising at Cincinnati, and to return home at once. I sent some men out to make an examination of the boat in the morning. I could see from the shore very plainly that they had made the necessary examination.

I directed them where to go and where to sound. They went upon the inside of her in the yawl; went around her bow; and there was stern-wheel boat lying at the shore inside of her from which we got the yawl. The boat was brought to the marine ways, in the 17th ward in Cincinnati by the underwriter. We pulled her out; she laid there for some considerable time. I cut her bow off and put a new bow on her, and put new guards on her, and repaired her up generally. I put her, I thought, in as good a condition as she was before the accident.

(Answer objected to as heresay and incompetent.)

502 2. Int. Did you, while she was lying there on the ways or before she was put on the ways, have an opportunity to examine the wreck, and the direction of the break in the bow made by the America; and could you from that examination tell in what direction the two boats came together, in what angle; and have you made a diagram of it showing the angle in which the two boats came together? If so, produce it and make it part of your deposition?

(Objected to.)

Ans. Yes; I had full opportunity to examine the wreck, and the direction the America went into her. From that examination I think I can tell very nearly what direction the two boats were running at the time of the accident. I have made a diagram of the position of the two boats at the time they came together. I mark it "Exhibit B," and annex it to my deposition.

3. Int. Suppose the two boats, at the time they struck, were backing with both wheels, and had backed three or four revolutions, and the States had some 200 tons freight on her, what effect, if any, would the mere force of the collision have as to knocking the bow of the States nearer towards the Indiana shore, coming together at such an angle?

503 (Objected to.)

Ans. In the manner those boats came together it would have very little or no effect in changing the shape of the United States, going down stream as she was; the blow would change her position very little if any. The wind would change the position of the America a little if the wind was blowing from the Indiana shore; if the wind was quartering on the Indiana shore, it wouldn't change the position of the America any.

4. Int. What did the position of the sides of the boats along the cut indicate as to whether the bow of the States had been shoved in by the force of the collision and while the boats were together?

(Objected to.)

Ans. I can give you, in my opinion, how they came together and how the' acted after they came together.

5. Int. Was the larboard side of the hull on each side of the cut of the States still standing or was it mashed in?

(Objected to.)

Ans. The larboard side of the States for about 15 feet from her stem was standing, the plank broke on the fo'ward side of that timber

504 right square down like it had been sawed, nearly. When she went in there, she went in about three feet from the stem on the larboard side. The America cut off the plank there or pulled them loose from the stem, and as she went the plank of the U. States that came in contact with the starboard side of the America broke off about five feet and doubled in-board. Then the plank fo'ward of that about four feet, with the part doubled, doubled out again and broke off; both parts doubled out. She was floated to shore, and I saw the timbers in that

position. I knew they were bow timbers, and I knew their position in the boat by the number. The balance of the room for the America to enter was made by riding her stem right over—by riding the stem of the States over to the starboard. I don't think it could have changed the position of the States any.

6. Int. What was the character of those two boats as to being long, narrow, and sharp at the bows, and as to having a sharp, heavy stem banded over the stem?

(Objected to.)

Ans. They were both of them very narrow at the bow, very long and sharp bows. They had, perhaps, the longest and sharpest
505 bows of any boats upon the river, with the exception of the Fleetwood. Her stem-band was half round and about 2½ x 4 inches wrought iron.

7. Int. How long have you been connected with building and repairing steamboats, and how long have you been familiar with their structure, weight, movement, and management?

Ans. I commenced learning the ship-carpenters' trade when very young, say 35 years ago, and I have been engaged in building, repairing, running, and raising steamboats for the last 35 years. For the last six or seven years I have been superintendant of the Marine Railway and Dry Dock Company. We are handling boats all the time. I have been on boats that came together, and know how they strike while backing.

(Plaintiff's atty. objected to the foregoing deposition, and declined to cross-examine.

Defendants' atty. requests the notary to state plf's. atty. was present during the whole of the examination-in-chief, which the notary states to be true.)

O. P. THARP.

506 *Deposition of David Whetter, see page 338 also.*

DAVID WHETTER, of sound mind and lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Examination-in-chief:

Question by T. D. Lincoln, esq., of counsel for defendants:

1. Int. State whether or not your deposition has been given in this suit before, and in which you have stated that you were on watch on the America on the hurricane-deck. If so, will you state whether you know the angle on which the States and America came together? State how they did come together, if you know, and state also what effect the force of the collision did have or could have in passing the bow of the United States towards the Indiana shore. If she got in nearer the Indiana shore before she sunk, how much nearer did she get, and how was it done?

(Question objected to.)

Ans. Yes, sir. I believe it has been given in this suit before, in which I stated I was on watch on the hurricane-deck of the America. I thought the States and the America came together nearly "head on."
507 I looked along her side and thought we should pass right along her side before she struck parallel with her; this was just before she struck. The force of the collision, I think, did not knock the United States in towards the Indiana shore three feet. I don't see how it could have knocked her towards the shore any; she got nearer by her wheels

working ahead. I think she must have got seventy yards nearer the Indiana shore before she sunk.

2. Int. Can the pilot, from where he stands at the wheel, see down on the forecastle of the boat?

Ans. No, sir, he cannot.

3. Int. Did you not, just as you backed out, see Captain Wade on the hurricane-deck of the States? If so, what was he doing?

(Question objected to.)

Ans. I heard Captain Wade holler, "Go ahead; run her to shore." It was night, and very dark, but I could hear him very plain; he hollered "Go ahead; run her into shore." I supposed it was Captain Wade. I supposed it was him by his voice. I knew it was him because I knew his voice. I think he had just come up. I saw some one come
508 up, and think it was Captain Wade. I don't know whether he came up from the cabin, or where; but saw him running from the direction of the steps forward, and hollering. I didn't see him on the steps.

4. Int. How far on the States was it from the ladies' cabin to where you saw this man to the part of the hurricane-deck wher' you saw this man?

Ans. I thought it was about the middle of the boat on the hurricane-roof.

5. Int. How many pairs of stairs would you have to go up to get on the hurricane-roof?

Ans. Two pairs.

6. Int. Do you know whether the man you heard was the man you saw running, or whether it might have been some other man that was running? Did you or not notice some one on the hurricane-roof throwing water down just as you backed away?

(Objected to.)

Ans. The man I heard I am satisfied was Captain Wade. I thought it was Captain Wade that was running; but it might have been some one else. I don't recollect noticing some one throwing water from the
509 hurricane-roof just as we backed away.

7. Int. How long were the boats together, and how far into the United States did the stem of the America enter, an' how near the stem of the States did it enter?

Ans. It appeared to me that, when the boats struck, in a minute they were apart. The stem of the America, it looked to me, went into the United States about twenty-five feet. I never measured it, never went to see it. I don't know how near the stem of the States, but it was pretty close.

8. Int. What would be the effect if the United States had been backing at the time of the collision with both wheels, and continued to back until the boats separated, and as they separated she stopped backing on the larboard, and went ahead on it, and then, as the boat turned her bow towards the Indiana shore, she stopped backing her starboard wheel, and went ahead on it; what effect would that have upon her?

Ans. Well, backing both wheels at the time of the collision
510 would stop her headway down stream. Stopping the larboard wheel from backing and going ahead on it would turn her bow towards the Indiana shore, and if, as she turned towards the Indiana shore, she stopped backing her starboard wheel and went ahead on it, it would carry the boat towards the Indiana shore.

9. Int. What do you know of your boat having at the time on board a regular enrollment; a regular license—regular inspector's papers

issued by the Government of the United States under the law relating thereto, all in force, and what became of them?

(Question objected to; also pl'fs atty. asks the production of copies of said papers from the original officers where they are kept, or the record thereof.)

Ans. She had all the papers required by law, framed and hung up in their proper places. They burned with the boat, I believe.

10. Int. What do you know of the pilot rules also being hung up in the pilot-house?

Ans. They were burned up in the pilot-house.

(Plff's atty. objects to the foregoin' deposition, and, under pro-
511 test, proceeds to cross-examine.)

Cross-examination:

Question by J. G. Douglas, esq.:

1. X-int. What was the speed of the America up stream while under full headway the night of the accident?

Ans. About twelve miles an hour.

2. X-int. How was the night—clear or dark; how was the wind—light or strong; and was there snow or sleet about the time of the accident?

Ans. The night was cloudy, dark. The wind blowed considerably strong from the west up the river. There was neither sleet or snow.

3. X-int. Was not you' boat quartering towards the Indiana shore?

4. X-int. Please examine the plat A, and state whether or not that is a correct plat of the way the boats quartered in towards the Indiana shore at the time they struck? Say yes or no.

Ans. This is a very good plat, but I think the' ought to be more straight up and down the river. It is a very good plat of it,
512 though.

DAVID WHETTEN.

Subscribed in my presence, and deposed before me this 16 day of February, 1871.

R. S. FULTON,
Not. Pub., Ham. Co., Ohio.

The further taking of these depositions is adjourned by consent of counsel until to-morrow, Thursday, Feb. 17th, 187', to be then resumed at the same place and between the same hours.

R. S. FULTON,
Not. Pub., Ham. Co., O.

OFFICE LINCOLN, SMITH AND WARNOCK,
Cinti., February 17th, 1871.

The taking of these depositions is resumed to-day, pursuant to the adjournment of yesterday, above noted.

R. S. FULTON,
Not. Pub., Ham. Co., O.

J. STAPPLETON DENSFORD, of sound mind and lawful age, being by me first duly sworn to testify the truth, the whole truth, an' nothing *by* the truth, deposes as follows:

Examination-in-chief:

513 Question by Mr. Lincoln:

1. Int. State whether or not your deposition has been taken in

this case in which you state were carpenter of the States, and that you saw the America when she was about 50 or 60 yards from the States, and before the accident.

(Question objected to.)

Ans. Yes, sir.

2. Int. At the time you saw the America on what angle was she approaching you? Look at the diagram made by Mr. Thorp, marked "Exhibit B," and state in your opinion what as to its being a correct diagram of the angle on which the two boats were approaching each other.

(Question objected to.)

Ans. It looked to me to be a very small angle indeed; scarcely an angle. The diagram is a very good one to show the angle. I think it correct as near as I can tell. I think it more correct than the diagram to Mr. Turpin's deposition, Exhibit A. I judge this from what I saw at the time, and from an examination I made of the break in the States afterwards.

514 3rd int. What connection had you with the raising of the boat, and did you examine her after she was raised and brought here?

(Question objected to.)

Ans. I was working there at the wreck, and helped raise her. I helped to build the bulk-heads. I worked as carpenter at the wreck. I examine' the boat after she was raised there, not here.

4. Int. What effect would the force of the collision have in forcing the bow of the States in nearer the Indiana shore? How much, if any, could it knock the bow towards the Indiana shore, both boats backing on both wheels at the time, being loaded as they were, and striking in the position they did, and having backed three or four revolutions before they struck, and continuing to back until they separated?

(Question objected to.)

Ans. Yes, sir; I suppose so.

5. Int. Would or not it knock it nearer the shore any?

Ans. Yes, sir; in my opinion.

515 6. Int. Have you any opinion how much, striking so near "head on," if any at all, the wheels continuing to back until separated?

(Question objected to.)

Ans. What do you mean; inches, feet, or what? She gave towards the Indiana shore; how much, I couldn't say. The boat gave towards the Indiana shore, I couldn't tell how many feet or yards.

7. Int. Did you see Captain Wade before the boats came together; and, if so, where was he?

Ans. Yes, sir; he was on the hurricane-roof forward of the chimneys.

8. Int. How far were the boats apart when you saw him there, and where was you at the time?

Ans. Well, they were about 50 or 60 yards apart. I was in the texas, looking out of my room-door.

9. Int. Had you seen Captain Wade a very short time before you saw him on the hurricane-roof, as you here described; and, if so, where and how long before?

(Question objected to.)

Ans. Yes, sir; he was in the hall of the texas. I couldn't say
516 how long before; it was a small time before. He came in and told me to turn the light down, it would blind the pilots. He came in to do that, and went right out again.

10. Int. What, if anything, did you see him do immediately after the collision as to putting out the fire?

(Question objected to.)

Ans. Immediately after the collision I saw him pick up some buckets of water, and run forward and throw it on the fire.

11. Int. Did you know anything about how the wheels of your boat were kept in motion after the collision?

Ans. No, sir.

12. Int. After the two boats separated, did they again touch each other; and, if so, do you know whether it was or not after the America had gone to shore to put her passengers off, and while she was backing out from the shore?

(Question objected to.)

Ans. They came alongside of each other. I can't saw whether the America landed before that or not.

517 13. Int. Do you or not know whether she had landed and put her passengers off and backed away, and, as she did so, rubbed against your boat and landed below the second time?

(Question objected to.)

Ans. Well, the second time she came alongside, I got off on her; whether she had landed before that I can't say of my own knowledge. I know only of the one landing at the shore.

14. Int. Was or not the landing you know of the one she made at the shore while she burned?

Ans. Yes, sir.

15. Int. From the time of the boats coming together to the time of the America landing at the shore where she burned up, had you any personal knowledge as to what the boats were doing with their wheels or attempting to do?

(Question objected to.)

Ans. The America was using her wheels to land. The boats were using their wheels. The both engines of the States were working when we left her.

16. Int. Did you or not know how the wheels were working, or more than that they were working?

(Question objected to.)

518 Ans. Well, they worked the America's wheels backward and forward two or three times in landing. The States' wheels were working, but I couldn't say how, whether backwards or forwards. Her wheels were working when I left her.

Cross-examination under exceptions to the foregoing deposition-in-chief:

Questions by Mr. Douglass:

1. X-int. After the collision, was your mind in such a condition that you could estimate the times of the different occurrences by minutes until you was on shore?

Ans. Well, I don't think my mind was in any way impaired. I was not frightened. Well, in time, some persons will say a "moment," some a "minute," and some "five minutes," and they all mean the same thing in my opinion.

2. X-int. To the best of your knowledge, in time by the clock, estimating 60 seconds as a minute elapsed after the collision before you was on the America?

519 Ans. Do you want to know how many minutes elapsed from the time of the collision until I was on the America? Well, it would be, I suppose, from five to ten minutes

3. X-int. How long after the collision did you notice the United States on fire, how many minutes?

Ans. From the time of the collision until I saw the fire? Well, it was almost momentarily, you may say.

4. X-int. Was not the first fire you saw on the forecastle, as you suppose?

Ans. The first fire I saw on the States was coming from the forecastle up the derrick. I couldn't see the forecastle from where I was.

5. X-int. Please state in whose employ you now are, and how long you have been in their employ.

Ans. I am employed on the United States, by the U. S. Mail Co. I have been in their employ four or five years.

6. X-int. How long after you got out of bed that night did the collision occur?

Ans. I had just gone to bed; well, when I heard the whistle, I
520 jumped out of bed and looked out, and saw the boat and saw Wade on the roof; the boats were 50 or 60 yards apart; I couldn't say how long it was until the collision occurred.

7. X-int. Was your testimony taken in the superior court of Cincinnati, and if so, did you not swear that you had gone to sleep, that you heard a whistle, that you put on your pantaloons, opened the outside door, looked out, and saw the America heading quartering on the United States, and stood there at your door looking out when the collision occur'ed; and if so, is that the fact?

Ans. I did. I don't remember of saying I had gone to sleep, in any of my testimony. I had gone to bed, but I could not say positively that I had gone to sleep; as to the rest I stated that, and it is a fact, to the best of my recollection. I have almost dispensed it. I didn't think I would be bothered again, and haven't thought of it for a year.

8. X-int. Did you not in your testimony then state, "I thought that it was the whistle that awoke me; it was the whistle on the States," and if so; was it the fact?

521 Ans. To that, if I remember, I think I stated that the whistle awoke me, the whistle of the States. I don't know that the whistle did awake me, or that I did so state; I heard the whistle and jumped out of bed.

9. X-int. At the time of the collision could you see the shore?

Ans. No, sir.

10. X-int. Could you tell whether the States was moving or not at the time of the collision?

Ans. I couldn't tell that; the States swung immediately after striking; swung her stem down stream.

11. X-int. Did you pay any attention to the two boats at the time of the collision?

Ans. Just at the moment of the collision you mean? Well, just a little before I noticed them coming together at an angle—some use the word "quartering" and some "angle." It was an angle sufficient to strike.

12. X-int. Where was you on the United States when you jumped over on to the America?

522 Ans. On her boiler-deck; I think about forward her pantry, about abreast of her boilers.

13. X-int. To what part of the America did you jump and land from the United States?

Ans. On the main deck of the America, right about her coal-box.

4. X-int. After you went off the roof through the cook-house on to

the main deck, did you pay any attention to the position of the boats at that time?

Ans. I saw the America on our larboard side, when I got onto the main deck of the States. I didn't notice particularly; the America was lying on the inside of us.

15. X-int. In your testimony in the superior court did you not state "I did not pay any attention to the position of the two boats at the time. I did not notice that at all." If so, is that correct?

Ans. The questions are different from any asked me there; I don't remember whether I made that statement.

16. X-int. When you came together in the collision, which boat was nearest the Indiana shore.

523 Ans. I couldn't tell anything about that. I didn't see any shore.

17. X-int. When you got onto the America could you tell whether the America came up to the States, or the States was bearing down against the America?

Ans. I don't recollect how it was. I know they came together.

18. X-int. How often have you been on the shore at the place of the accident?

Ans. I was there a week after the accident—seven days—I stayed there the next day until about 12, and then went home. I came up back again on Monday, and think we stopped at the wreck, and came up to Cincinnati. I went down to the wreck and helped raise her.

Re-examination:

Questions by Mr. Lincoln:

1. Re. At the time you looked out of your room and saw the America about 50 or 60 yards off, and saw Wade in front of the chimneys, did you then know whether they would strike or miss one another?

524 (Question objected to.)

Ans. No; I did not.

2. Re. When they did come together what did you do with reference to your boots and coat?

(Question objected to.)

Ans. Well, I believe I have stated that I put on my pantaloons. I can't say which I put on first, pantaloons or boots. I don't remember when I put on my coat. I know I dressed myself as quick as I could.

3. Re. Where'bouts was your room with reference to the stem?

(Question objected to.)

Ans. My room was in the texas, the third room from the fo'ward end, on the larboard side. It was in the neighborhood of 14 feet from the stem.

4. Re. After the boats struck do you know of your knowledge what was done with the wheels?

(Question objected to.)

Ans. They were working the engines, but whether they were going ahead or back, I don't know.

525 Recross-examination by Mr. Douglass:

1. In your testimony in the superior court did you not swear: "I put on my clothes when I heard the whistle, and I put on my pantaloons, and as they came together I jerked my boots and coat on and run out on the roof. I saw fire shortly after the collision?" and if so, was it the fact?

Ans. Particularly, just as that is written, I do not remember of saying those words.

2. Do you remember of using words to that import, and in that connection?

Ans. The meaning of it was, I dressed myself and got out on the roof. I don't remember the words.

3. Do you recollect using the words: "I saw the fire shortly after the collision?"

Ans. Yes; that is correct.

Question by Mr. Lincoln. Did you see fire when you went on the roof?

Ans. No.

J. S. DENSFORD.

526 The further taking of these depositions is here adjourned by consent of counsel for the parties, until to-morrow, February 18th, 1871, to be resumed at the same place and between the same hours.

R. S. FULTON,
Not. Pub. Ham. Co., O.

OFFICE LINCOLN, SMITH AND WAMACK,
Cincinnati, February 18th, 1871.

The further taking of these depositions is resumed to-day, pursuant to the adjournment of yesterday above noted.

R. S. FULTON,
Not. Pub. Ham. Co., O.

Dep. of James Holmes.

JAMES HOLMES, of sound mind and lawful age, being by me first sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

Examination-in-chief:

527 Questions by Mr. Lincoln:

1. Int. State your name, where you reside, what is your business, how long and where you have followed it; what, if any, connection had you with the America at the time she came into collision with the United States, and state whether or not you were on watch at the time.

Ans. My name is James Holmes. I reside in Louisville, Kentucky. I am a steamboat engineer, and have followed the business about thirty-two years. I was chief engineer of the America at the time of her collision with the States, and was on watch at the time.

2. Int. Will you please state what took place on the America just before and after the collision?

Ans. I was on the foot-box of the starboard engine of the America, and first that I heard was two long whistles from the America. In a minute or a half a minute after—somewhere in that neighborhood, I can't state exactly the time—I heard two more short whistles from the America. Then the bells rung to stop her, and then to back her.

528 Well, I backed her about two revolutions and a half when the two boats came together. Well, we backed out from the States, and then the bells rung to stop her, and then to go ahead, and we went ashore with the America and put off her passengers. Then I looked out, and saw the fire on the States.

3. Int. How did you first back her, whether strong or otherwise, and at the time they came together what headway, if any, had the America? How long were the two boats together before they separated?

(Question objected to.)

Ans. Well, I backed her strong—backed her very strong. At the time they came together it would be very hard for me to tell, but I think her headway was about two-thirds stopped, perhaps more. You might say the time they were together was instantaneous. She backed right out in a quarter or half a minute; the America *hode* the States, and backed right out. I *I* would think the America's bow raised some three or four feet.

4. Int. Did you notice the break in the bow of the States made by the America after she was raised; and, if so, please state
529 whether you could form an opinion or judge how the two boats came together—as to the direction they were running when they came together, relative to each other?

(Question objected to.)

Ans. Yes, sir; well, they came together about nearly "head on." I have been looking at the plat marked "Exhibit B," and think that is about the way they came together.

5. Int. If the States was backing hard at the time, and had made some three or four revolutions back, and had continued to back until the two boats separated, what effect, if any, would the mere force of the collision have to throw the bow of the States nearer the Indiana shore, coming together, as you say, nearly "head on?"

(Question objected to.)

Ans. Well, I don't think it would throw her any nearer, coming together as they did?

6. Int. Suppose, Mr. Holmes, both wheels of the States were backing hard as they separated, and as soon as they separate' the larboard engine stopped backing, and then goes ahead, while the starboard
530 engine continues backing; what effect would that have on the boat?

(Question objected to.)

Ans. It would throw her right around to the Indiana shore.

7. Int. Now, suppose when she gets her head towards the Indiana shore, the starboard engine stops backing and goes ahead; what effect would that have upon the boat?

(Question objected to.)

Ans. It would run her right into shore.

8. Int. While the starboard wheel is stopped from backing, and so long as it remains still without going ahead or backwards, what would be the effect of going ahead strong on the larboard wheel while the boat is swinging around towards the Indiana shore?

(Question objected to.)

Ans. It would certainly run her nearer to the Indiana shore.

9. Int. Mr. Holmes, what was the shape of the bows of those two boats as to being bluff or blunt, or very narrow and sharpe?

(Question objected to.)

531 Ans. Well, they were narrow and sharpe.

10. Int. How wide was the hull of the States, about twenty feet back of the stem, above and below?

(Question objected to.)

(Ans. Well, I expect about six or seven feet below, and about ten or twelve above. That is 20 feet aft the stem.

Cross-examination by Mr. Douglass:

1. X-int. Please state in whose employ you now are, and your business.

Ans. In the mail company's employ. I am an engineer on the Gen. Lytle.

2. X-int. Where was your position at the time of the accident? Was you on duty?

Ans. I was on the foot-box at my engine at the time, on duty.

3. X-int. Were the doors down around the engine-room at the time of the accident?

Ans. Yes; the doors were down, except one small one on the
532 larboard side, which was open, I think, at the time of the accident.

4. X-int. How long did you stay in the engine-room after the time of the accident? How many minutes did you stay in the engine-room in charge of the engine after the collision, before you left the engine-room—how many minutes?

Ans. I left the engine-room at the time I went ashore—the last time she landed. It might have been ten or twelve or thirteen minutes from the time the boat struck—somewhere in that neighborhood. The boat was nearly burned up when I left the engine—I mean the cabin.

5. X-int. Have you any practical experience, except as engineer, upon boats, or do you do otherwise, as engineer, than to obey instructions as sent down to the engine-room; is not that your entire duty?

Ans. Oh, yes, sir. I have worked in shops. I learned the blacksmith's trade. I answer the bells as near as I can. When the captain sends down orders, I obey them. That is my duty, and to keep my machinery in order. That is my entire duty on a boat.

533 6. X-int. The fact of your being a practical blacksmith, as you claim, do'sent give you any knowledge of the piloting and commanding of a steamboat?

Ans. Well, no, sir; I don't see as it does. It gives a man some knowledge of his machinery in keeping his engines up, &c.

Redirect examination by Mr. Lincoln:

1. Re. State whether or not your having been engineer on western steamboats for 30 years does or does not give you special knowledge, over and above that of other men not connected with boats at all, of the handling, management, power, and momentum of the boats in motion, and, indeed, of the duties of the captain and pilot of the boats.

(Question objected to.)

Ans. Certainly it does.

Recross-examination by Mr. Douglass:

1. Re-x. From your experience as engineer and blacksmith, is
534 there any rule that would authorize the captain or pilot of the States or America to run into another boat?

Ans. Not as I know of, there aint.

JAMES HOLMES.

The further taking of these depositions is here adjourned, by consent of counsel for the parties, until Monday, February 20th, to be resumed at the same place and between the same hours.

R. S. FULTON,
Notary Public, Hamilton Co., Oh o.

OFFICE LINCOLN, SMITH AND WARNOCK,
Monday, February 20th, 1871.

The further taking of these depositions is resumed, pursuant to the adjournment of Saturday, February 10th, 1871, above noted.

R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

Deposition of A. J. Harrigan.

535 A. J. HARRIGAN, of sound mind and lawful age, being by me first sworn to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposes as follows:

Examination-in-chief:

Question by Mr. Lincoln of counsel for defendants.

1. Int. State what boat you were on and in what capacity at the time of the loss of the United States and America, a short distance above Warsaw, Kentucky, on the night of the 4th of December, 1868, and state, if you know, what amount of cargo you had on board of the United States at the time of her loss?

Ans. I was on the steamer United States at the time of her loss, in the capacity of second clerk. The States had about two hundred tons of cargo on board of her at the time of the disaster. I was freight-clerk on board of her—second clerk.

2. Int. What, if anything, had you to do with the management, control, or running of the boat? State whether or not you the facts in relation to that.

536 (Question objected to.)

Ans. I had nothing to with the management, control, or running of the boat; nothing at all. I know very little about the facts. I know that the fire broke out immediately after the collision, at any rate, a very short time—say five or six seconds—after the collision. I know they did everything they could to get the boat ashore; didn't see the shore before the collision, and don't know how much nearer they got, but I know they got considerably nearer the shore; they kept the wheels working all the time.

(Plff. attorney excepted to the above answer as not responsive to the question.)

3. Int. State whether or not you saw Captain Wade at the time or about the time of the first whistle, and if so, where, and where did he go at the the first whistle blew?

(Question objected to.)

Ans. Yes, sir. I saw Captain Wade; I saw him going from the gangway door from the barber-door, towards the steps leading up on the hurricane-roof of the States; this was about the time the first whistle ceased blowing.

Cross-examination:

537 Questions by Mr. Douglass' of counsel for plaintiff.

1. X-int. Please state where you' position was in the States, and what were your duties?

Ans. I was second-clerk. I was standing at the barber-shop door at the time the first whistle ceased blowing. My duties were entering-up freight & having charge of freight.

2. X-int. How long after the first whistle was the collision? Can you state in minutes?

Ans. No. I cannot state exactly in minutes.

3. X-int. State, as near as you can, in minutes, whether it was an hour, a half hour, or five minutes?

Ans. Well, it was close to five minutes.

4. X-int. Was it less than five minutes?

Ans. Well, that I could not exactly tell you.

5. X-int. What became of your books for the sale of tickets and berths?

Ans. They were all burned.

538 6. X-int. Have you any recollection of the quantity of the freight, and whether you had any coal-oil on board?

Ans. We had bills of lading for, I think, *for* 25 barrels of coal-oil, and whisky, and bacon. We got the whisky at Aurora. I think there was some 50 or 60 barrels of whisky.

7. X-int. Did you see Captain Wade at the office that evening?

Ans. Yes, sir; I saw him there just after we backed out from Aurora. He came down an' inquired of me how much freight we got. I remember that very distinctly.

16. X-int. Where was you at the time of the collision?

Ans. I was on the boiler-deck guard, standing about the starboard chimney.

17. X-int. How many whistles did you hear?

Ans. I heard one whistle.

Re-examination:

Question by Mr. Lincoln.

1. Re. What sort of a whistle was that?

539 Ans. Tolerably long—the whistle usually blown when meeting boats.

2. Re. Did you notice where the coal-oil you speak of was placed and carried on the boat?

Ans. Forward, across the forecastle and along the guards, the forward guards.

A. J. HARRIGAN.

The further taking of these depositions is here adjourned, by consent of counsel for parties, until to-morrow, Tuesday, February 21st, 1871, to be then resumed at the same place and between the same hours.

R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

OFFICE LINCOLN, SMITH & WARNOCK,
Feb'y 21st, 1871.

The further taking of these depositions is resumed to-day, pursuant to the adjournment of yesterday, above noted.

R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

540 *Deposition of Oliver H. Noble.* (*See also pages* 484–563.)

OLIVER H. NOBLE, of sound mind and lawful age, being by me first sworn to testify the truth, the whole truth, and nothing but the truth in relation to the said cause, deposes as follows:

Examination-in-chief:

Question by Mr. Lincoln, of counsel for defendants.

1. Int. State what connection you had with the steamer United States at the time she was lost with the America, and state whether or not your deposition has been before taken in this case.

Ans. I was on the United States at that time, but was not on watch at the time of the accident. I believe my deposition has been before taken in this suit; it was taken in some case here the other day.

(Plff's. attorney excepts to the retaking of this witness.)

2. Int. If you saw the boats when they were about thirty feet apart,

as you have stated in your former deposition, will you state how they came together, at what angle in relation to each other, and what
541 effect, if any, would the blow have in crowding the bow of the States in nearer the Indiana shore?

Ans. They looked to me to come together about "head on." I don't know that the blow of the collision would have any effect in driving the bow of the States nearer the Indiana shore. It would stop her headway. It would drive her back a little.

3. Int. As soon as you saw them come together what did you do, where did you go? and do you know what was done on the States after the collision and just before the collision?

Ans. I went through my room into the carpenter's room to get my little boy. I told him to dress himself while I dressed myself. I do not know what was done on the States just before and after the collision.

(Answer objected to as not responsive to the question.)

Cross-examination:

Question by Mr. Douglass, of counsel for plaintiff:

1. X-int. What time did you go to bed that night?

542 Ans. I think it was about half past seven or eight o'clock.

2. X-int. How long was you in bed before the collision?

Ans. About four hours. It was about 12 o'clock the collision occurred.

3. X-int. Did the collision awake you, or was you awake before the collision?

Ans. No, sir; the pulling of the bell-ropes awoke me. I was awake before the collision.

4. X-i't. How long was you awake before the collision?

Ans. A minute or two, two or three minutes, may be.

5. X-int. Where was you standing?

Ans. In the texas, in the room behind mine.

OLIVER H. NOBLE.

The further taking of these depositions is here adjourned, by consent of counsel for the parties, until to-morrow, February 22nd, 1871, to be resumed at the same place and between the same hours.

543 R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

OFFICE LINCOLN, SMITH & WARNOCK,
Cincinnati, Wed., Feb. 22d, 1871.

The further taking of these depositions is resumed to-day, pursuant to the adjournment of yesterday, above noted.

R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

Deposition of Jacob Remelein. (*See also page* 289.)

JACOB REMELEIN, of sound mind and lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposes as follows:

Examination-in-chief:

Question by Mr. Lincoln, of counsel for defendants:

1. Int. State whether your deposition has or has not been before taken in this cause.

544 Ans. It has.

2. Int. How did the two boats come together relative to their position with reference to each other?

Ans. Well, a little quartering, a little bit—pretty near "head on.' The shore is straight there.

3. Int. How much nearer the shore, if any at all, was the States when she sunk than she was at the time the two boats came together?

Ans. From 50 to 60 yards at least, or a little over.

4. Int. Your former deposition reads that you got from fifty to sixty feet nearer; what does that relate to, to what time; what do you mean?

Ans. Well, I think there must be a mistake some way, that I was misunderstood. I meant yards, and think I said yards.

5. Int. State where the States sunk with reference to low-water mark, and whether or not the river ever gets dry where she sunk.

Ans. Well, I never saw it dry there; I don't think it ever does get dry where she sunk.

545 6. Int. Did you see Captain Wade before the collision; if so, where, and did you get any order from him as the boats backed apart? if so, what was it, and how long did the boats remain together?

Ans. Yes, sir; he was on the hurricane-deck, walking out forward. I got an order from Captain Wade as the boats backed apart. He told me to get her into shore as quick as I could. I said aye, aye. The boats remained together about a quarter of a minute; the' backed right apart.

7. Int. As you backed away, what, if anything, did you notice as to the fire?

Ans. I saw a flame flash up from the bow of the States in front of the cabin.

Cross examination:

Questions by Mr. Douglass, of counsel for plaintiff:

1. X-int. In whose employ are you now?

Ans. I am on the Dumont; it runs from here to Madison.

2. X-int. Do you mean that that boats is not owned by the mail line?

546 Ans. They say she belongs to the mail company. She belongs to the mail company.

3. X-int. Then, do I understand you to swear that you are not in the mail company' employ?

Ans. I am not positive whether the Dumont belongs to the mail company or not. I've only heard them say so.

4. X-int. Who did you hear so?

Ans. Well, I don't remember now.

5. X-int. Do you mean that you do not know positively that the Dumount belongs to the mail-line company?

Ans. Only what I have heard them saying; they say she does.

6. X-int. How often have you landed on the shore where the United States sunk?

Ans. Three or four times, or a little above.

7. X-int. What do you mean by a little above—how many feet?

Ans. Maybe a hundred yards.

8. X-int. At what time and date did you land, and at which point?

547 Ans. I landed there the time they sold the wreck of the America. I don't remember the date. I landed above yesterday. We land pretty much every day there, above, when we have business there.

9. X-int. That time, of the night of the collision, what was the first point you made in stopping before the collision?

Ans. We stopped at Aurora, Ind. Not after, until the collision.

10. X-int. Did you go ashore the night of the collision?

Ans. Yes; I swam ashore.

11. X-int. Was this the first time you were ever on the shore at that point?

Ans. No; not at that point. I have been ashore above.

12. X-int. When were you ashore above that point, and where, before the collision?

Ans. That's been a great many years ago. In 1847, perhaps longer. I laid there in the ice, and went ashore. This was two or three miles above the place of the accident.

13. X-int. Before the collision, was there snow or sleet that night?

548 Ans. It was sprinkling a little, a fine, drizzly rain, after we left Cincinnati a few miles. There was no snow. I don' recollect of any sleet.

14. X-int. Do you swear particularly that there was no snow or sleet driving up stream and quartering on the Indiana shore?

Ans. Not while I was on duty, sir. There was wind blowing, if you mind to put that down.

16. X-int. Where were you born?

Ans. Born in France, in Alsace, a German settlement on the Rhine.

17. X-int. Did you ever live in——

Ans. No, sir; I did not, sir.

18. X-int. Then why do you answer my question by asking another?

Ans. I never lived there. I have been making my home here ever since I came here, in Cincinnati.

JACOB REMELEIN.

549 *Dep. of Thos. F. Eckert.*

THOMAS F. ECKERT, of sound mind and lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposes as follows, to wit:

Examination-in-chief:

Questions by Mr. Lincoln, of counsel for defendants:

1. Int. State your residence and occupation, and how long you have followed your occupation.

Ans. I live at 135 Broadway, in Cincinnati. I am president of the Western Insurance Company at present; prior to that I was steamboat captain on western waters some eighteen years, and on the altogether some 22 years.

2. Int. Did you examine the break in the United States made by the America; if so, where, and could you or not tell from the break the direction in which the two boats came together? If so, state what it was.

(Question objected to, and also to the examination of the witness.)

550 Ans. I examined the break in the United States down where she was sunk, and also after she was towed up to the ship-yard and hauled out. I have my ideas, from the natu'e of the break and the appearance of the things what the direction of the boats was. There is a drawing here, marked "Exhibit A," which represents the directions, in my judgment, as nearly as can be drawn. It is about

such a plat of it as I made myself. It seems to me more accurate than plat marked "Exhibit B."

3. Int. Supposing the two boats were backing at the time they came together, and continued to back until they separated, comeing together in the direction you think they did, to what extent, if at all, would the force of the collision and the momentum of the boats tend to throw the bow of the States nearer the Indiana shore?

(Question objected to.)

Ans. It would have some tendency, but very little, comeing together so near straight on as they did. The course of the America came very straight into the States until her stem struck the bulk-head of the States and the iron shaft that runs from the "nigger" to the stem-capstan.

551 4. Int. What connection had you with the raising of the States, and what connection have you had with the raising of sunken boats, and what attention did you give to the matter of the States?

(Question objected to, and also plaintiff' attorney objects to the witness having a copy of the printed testimony in the superior court—of his testimony in that case, heretofore shown to him.)

Ans. I superintended the raising of the States as the president of the Cincinnati Wrecking Company. I have raised a great many sunken boats. I gave a great deal of attention to the matter of the States. I have always thought I had some considerable knowledge of the power and motion of boats. I served a long apprenticeship on the river, and always delighted in it. If I don't know abouat a steamboat I don't know anything.

5. Int. What do you say of the place where the wreck of the States sunk—as to the water ever getting dry there?

(Question objected to.)

Ans. I don't think the river ever gets dry there.

552 6. Int. When you ran on the river, between what points did you run? State whether or not you passed this place going up and down.

(Question objected to.)

Ans. I ran in the mail line here. I was engineer on the Robert Fulton, in that trade, and on the Versail'es two seasons, besides all the other running up and down there on the other boats. I have passed it often, a great many times.

7. Int. What, if any, connection had you with the present mail-line company at the time of this disaster, or have you now?

Ans. I had no connection, and have none now.

8. Int. Can you state in degrees the angle at which the boats were approaching each other in the river at the time they struck?

(Question objected.)

Ans. Well, my idea is from five to six degrees. I believe my calculation before was six degrees.

(Plff. attorney objects to the foregoing deposition, and under protest proceeds to cross-examine.)

Cross-examination:

Question by Mr. Douglass, of counsel for plaintiffs:

553 1. X-int. Are you not president of the Western Insurance Company?

Ans. Yes, sir.

6. X-int. Was you on the boat at the time of the collision?

Ans. No, sir; I was not.

7. X-int. When did you first go down to the place of the accident? Give the day of the week and month.

Ans. I can't do that; I don't remember. It was two or three days after she sunk; about the second day after she sunk—not later than the third.

8. X-int. What boat raised her?

Ans. The Underwriter.

9. X-int. You swear that three days after the United States sunk, you raised her with the Underwriter?

Ans. No, I don't swear that; but it wasn't five days after she sunk that we got her up.

10. X-i't. How often have you been on shore there at that point where she sunk?

Ans. I can't say; not often.

554 11. X-int. Cannot you tell whether it was five or ten times, or whether you ever were on shore at that point?

Ans. I have been at different times on shore at the different landings, but can't say when and where.

12. X-int. Do you swear that you was on shore at the point of collision for one year before the accident, or was there to your knowledge any landing at that point where the collision occurred?

Ans. I don't swear any such thing. I know I wasn't within a year about a hundred yards above where the collision occurred, (the boat didn't sink where the collision occurred; I suppose the current carried her down some;) about one hundred yards above there was a landing where passengers got off an' on.

13. X-int. Then do you swear under oath that your suppositions are your oath? If you were not there at the time of the collision, how do you know anything about it except by conjecture, theory, and guess-work?

555 Ans. That is all anybody can do who was not an observer. From an examination of the break, and making a calculation of how long it would take her to sink, I could judge within twenty yards the place they came together.

14. X-int. Do you swear, then, that all you know is not mere theory?

Ans. I don't think it is.

Re-examination by Mr. Lincoln:

1. Re. Do you know what was in these casks or cases which you supposed had vitriol in them?

Ans. Nothing, only they were vitriol cases; such as I have often seen it carried in, & often carried myself, in.

3. Re. Did or not the break in the hull of the States show from the marks and break, to one familiar with boats and their motions, the angle at which they came together?

(Question objected to.)

556 Ans. They did; and the drawing marked "A" represents the angle at which they came together, according to my judgment.

T. F. ECKERT.

The further taking of these depositions is here adjourned, by consent of counsel for the parties, until to-morrow, February 23d, 1871, to be then resumed at the same place and between the same hours.

R. S. FULTON,
Notary Public, Hamilton County, Ohio.

OFFICE LINCOLN, SMITH AND WARNOCK,
Cin'ti, Feb'y 23d, 1871.

The further taking of these depositions is resumed to-day, pursuant to the adjournment of yesterday noted above.

R. S. FULTON,
Notary Public, Hamilton County, Ohio.

557 *Deposition of Oliver H. Noble.* (*See also pages* 469 & 563.)

OLIVER H. NOBLE, recalled, of sound mind and lawful age, being be me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposes as follows:

Examination in chief:

Questions by Mr. Lincoln, of counsel for defendants:

1. Int. Had you or had you not any oil of vitriol aboard that night; and, if so, where was it carried, and in what kind of boxes? If you had any coal-oil on board, state where it was carried—how far from the fires.

(Question objected to.)

Ans. We had some boxes of oil of vitriol aboard. It was stored out forward of the steps on the lower deck. It was in iron-bound boxes. The coal-oil was carried on the forward guards, main deck, at least sixty feet from the fires.

2. Int. What has been the usual way on the western waters, during your experience, of carrying oil of vitriol, and why?

(Question objected to.)

Ans. It has always been carried in these kind of boxes, and
558 always stowed on the lower deck. It stowed there because it is the safest place to carry it. It can be easily thrown into the river if any injury happens to it. It can't be stowed in the hold; it eats, &c.

(Plaintiff's attorney objects to the examination and re-examination of the witness, and under protest proceeds to cross-examine.)

Cross-examination. Questions by Mr. Douglass:

1. X int. You speak about vitroil in iron-bound boxes; please explain how vitroil is packed.

Ans. Well, in the first place it is put into a glass demijohn, when it is put into sheet-iron boxes—boxes lined with sheet-iron. It is packed in an iron case—packed with straw, and enclosed in wooden boxes.

2. X-int. Did you see that day, befor' shipment, the goods packed in that way for shipment on your boat?

Ans. They came aboard that way. I noticed that.

559 3. X-int. Were they not enclosed in wooden boxes, and did you look inside on the day of shipment?

Ans. I could look into the neck of them. I didn't look inside, I could see the iron there.

4. X-int. How many boxes of vitroil were shipped, as you know so much about it, and how many were there?

Ans. I did not look into the neck of each one; I suppose there was about fifte'n or twenty.

5. X-int. Were you present at the entire reception of freight that day?

Ans. Receiving freight here? Yes, sir.

6. X-int. What are your duties as mate in the reception of freight?

Ans. I send the freight all in and stow it. Sometimes I receive it myself.

8. X-int. Do you swear that there was no coal-oil on board at the time of the collision, and that the vitroil had an iron case inside the wooden?

560 Ans. No, sir; there was coal-oil on board. I swear that the vitroil had an iron case inside the wooden packing. I saw that. I threw them overboard after the collision.

10. X-int. Do you know who shipped the coal-oil?

Ans. No, sir.

OLIVER H. NOBLE.

The further taking of these depos'tions is adjourned until to-morrow, Tu'day, February 24th, 1871, to be then resumed at the same place and between the same hours.

R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

OFFICE LINCOLN, SMITH & WARNOCK,
Cin'ti, February 24th, 1871.

The further taking of these depositions is resumed to-day pursuant to the adjournment of yesterday above noted.

R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

561 *Dep. of Oliver Palmer.*

OLIVER PALMER, of sound mind and lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the said cause, deposes as follows, to wit:

Examination-in-chief. Question by Mr. Lincoln:

1. Int. State where you reside; what is your business; how long and where you have followed it; state what connection you have had with the raising of wrecked boats, and what knowledge of boats you have, and of their powers and motions?

Ans. I reside in Covington, Kentucky. I was formerly a ship-master, at present I am marine agent of underwriters, and adjustee of marine losses. I have followed my present business about 16 years, and was ship-master for ten years previously. Seven of these 16 years I was engaged in the above occupation for the New York underwriters on the Northern Lakes, the balance of the time I have followed it for the Cincinnati underwriters. Raising wrecked boats has been part of my business for the last 16 years. I have been about boats all my life.

562 My father was a ship-builder and I have been familiar with boats from my boyhood.

2. Int. Did you examine the wreck of the United States after she was raised? If so, state where was it, and could you or not from the direction of the break, what was the direction in which the two boats were running at the time they came together.

Ans. I did examine the break in the States after she was raised; I made an examination of it at the ship-yard after she was hauled out on the ways. I could tell from the break what direction the boats were running when they came together.

3. Int. How near upon a parallel line were they running when they met, what angle were they making with reference to each other when they struck—did you measure it, if so, how large was the angle—how many degrees?

Ans. The break in the deck of the States indicated an angle of about five or six degrees. I simply placed the length of the cut and judged it to be about thirty to forty feet if I recollect right, that
563 is the length of the break in the deck planks. I did not measure the angle only with my eye.

4. Int. Did you or not look at the break with reference to the angle, and who was with you at the time, if anybody?

(Question objected to.)

Ans. I did. I think Captain Eckert and I went up together, but I have no recollection of his being present at the I made the examination.

5. Int. Suppose the boats, one going up-stream and the other coming down-stream, should come together in that way, and upon that angle only, and had each backed from two to four revolution' before they came together, and continued to back until they separated, to what extent, if at all, would the blow of the collision and the momentum of the boats tend to throw the bow of the States towards the Indiana shore, she being the down-stream boat?

(Question objected to.)

Ans. The tendency to be shoved either way, in my mind, would be very slight, both being on so nearly parallel lines.

6. Int. As their headway was stopped by the collision, and being so slightly inclined towards the shore, what would be the tendency of the current on the States, as to swinging her either way, and upon what point or pivot would she swing, if at all, it being understood that the States is coming down?

(Question objected to.)

Ans. If the current struck the States on the starboard side, which it would if her head was nearest the Indiana shore, the headway of both boats being stopped, the tendency of the States would be bodily towards the Kentucky shore. Her stern would swing around more rapidly towards the Kentucky shore than her bow.

Cross-examination. Questions by Mr. Douglass.

1. X-int. W*as* you present at the of the collision?

Ans. No, sir.

2. X-int. I understand the only place you saw the States, after the accident, was upon the "ways" at Cincinnati?

Ans. Yes, sir; that is correct.

565 3. X-int. W*as* not the guards of the States broken about forty feet?

Ans. I am under the impression that the larboard guard of the States was cut entirely away for about twenty feet aft of the stem, and more or less shattered for about fifteen feet further aft.

4. X-int. In the case of the America, in the superior court of Cincinnati, did you not swear, in answer to Mr. Lincoln's question, that the "stern of the States began to swing down-stream; it would shatter the guard around here, the effect would be different if she would swing different," and if so is it true?

Ans. If I swore to it I believe it to be true. My reccollection at that period was much more fresh than it is now in regard to the details of the examination.

5. X-int. From your present recollection is that your belief?

Ans. That would be the effect upon the States while the two boats remained in contact, and the stern of the States swinging around towards the Kentucky shore.

566 6. X-int. In that examination, in answer to Mr. Lincoln's ques-

tion, did you state, "it appears that both boats were striving to get to the Indiana shore." If so, from your present reccollection and examination, do you believe the same to be correct?

Ans. I stated upon that occasion, or intended to be understood, that from the angle at which the boats came together that they both seemed to have been striving to pass each other on the Indiana side.

7. X-int. What was the difference in size and construction of the America and United States, in length and breadth of beam?

Ans. The America was about four feet more beam, or breadth, and some number of feet longer—I don't remember.

8. X-int. How was the stem of the America protected with irons?

Ans. With the ordinary stem-band of iron.

9. X-int. How was the build of the States, as to hull, whether flat or rounding?

567 Ans. Both boats were flat bottoms, and as to the model very similar.

10. X-int. Could the United States be loaded fore and aft with the same weight, and run trim?

Ans. If the cargo was properly loaded she would run trim.

11. X-int. In trim, does the States draw as much water fore and aft?

Ans. Certainly, when she is in trim.

12. X-int. Then, if the States goes over a sand-bar the stem will not hang?

Ans. The stern would pass over it in the same water the bow would, if she was on an even keel, or trim.

13. X-int. Then, I understand you, that a boat in motion, if the bow passes over an obstruction, the stern will also go over?

Ans. It would, unless she rubbed the obstruction too hard; the momentum of a boat will sometimes carry her over an obstruction but part way on an even keel; her stopping on it or her going over it would depend upon how hard she rubbed upon the obstruction.

568 14. X-int. In the States how near is the main passage way for the entrance and exit of passengers from the stem, to the best of your knowledge, how many feet?

Ans. I never measured it, but, from the best of my recollection, about sixty feet.

Re-examination by Mr. Lincoln:

1. Re. When you was examined at the court-house in the insurance cases were you examined for the Mail Company or against them?

Ans. I have no reccollection which party subpœnead, but I think I was examined in behalf of the insurance co's.

2. Re. Was not what you stated on that examination, with reference to the 4th cross-interrogation now put to you, this: "If the stern of the States began swinging down stream, it would shatter the guard back here," pointing with your finger to the guard back of the break on a diagram which you then had?

(Question objected to.)

569 Ans. I think it was.

Re-cross-examination by Mr. Douglass:

Re-x-int. Did you say the diagram then showed you was not right?

Ans. I reccollect I saw one diagram which was not correct and so stated; I saw a number of diagrams on that trial, one of which, as shown me, I thought incorrect. I cannot say which one it was.

O. PALMER.

By consent of counsel for the parties, the taking of depositions under this notice was closed the 24 day of February, 1871.

R. S. FULTON,
Not. Pub., Ham. Co., O.

STATE OF OHIO,
Hamilton County, ss:

I, R. S. Fulton, a notary public, within and for the above
570 county and State, do hereby certify that the following-named witnesses, viz: William M. Turpin, Charles J. Marshall, Oliver P. Thorp, David Whitten, J. Stapleton Dansford, James Holmes, A. J. Harrigan, Oliver H. Noble, Jacob Remelein, Thomas F. Eckert, Oliver H. Noble, (2d time,) and Oliver Parmer, the above-named deponents, whose depositions are heretofore set out, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, in the cause now pending in the common pleas court of Switzerland County, and State of Indiana, wherein Charles Alling, administrator of Otis B. Sappington, deceased, is plaintiff, and Thomas Sherlock and others are defendants; that the depositions were all reduced to writing by myself in the presence of said witnesses, except the cross-examination of Charles J. Marshall, and a part of the examination-in-chief of Oliver P. Thorp, which, by consent of counsel for the parties was reduced to writing by Ernest F. Freis, a notary public for the said county, and a disinterested party; and that the said deponents subscribed their respective depositions after the same had been carefully read over
571 to the said deponents, respectively; that the adverse party was present by his counsel, J. G. Douglass, esq., during the taking of said depositions; that all of the said depositions were taken at the law office of Lincoln, Smith, and Warnock, northwest corner of Third and Walnut streets, in Cincinnati, Ohio, on the 14th, 15th, 16th, 17th, 18th, 20th, 21st, 22nd, 23d, and 24th days of February, A. D. 1871, between the hours of eight (8) o'clock a. m. and six (6) o'clock p. m. of said days, agreeably in all respects to annexed notice.

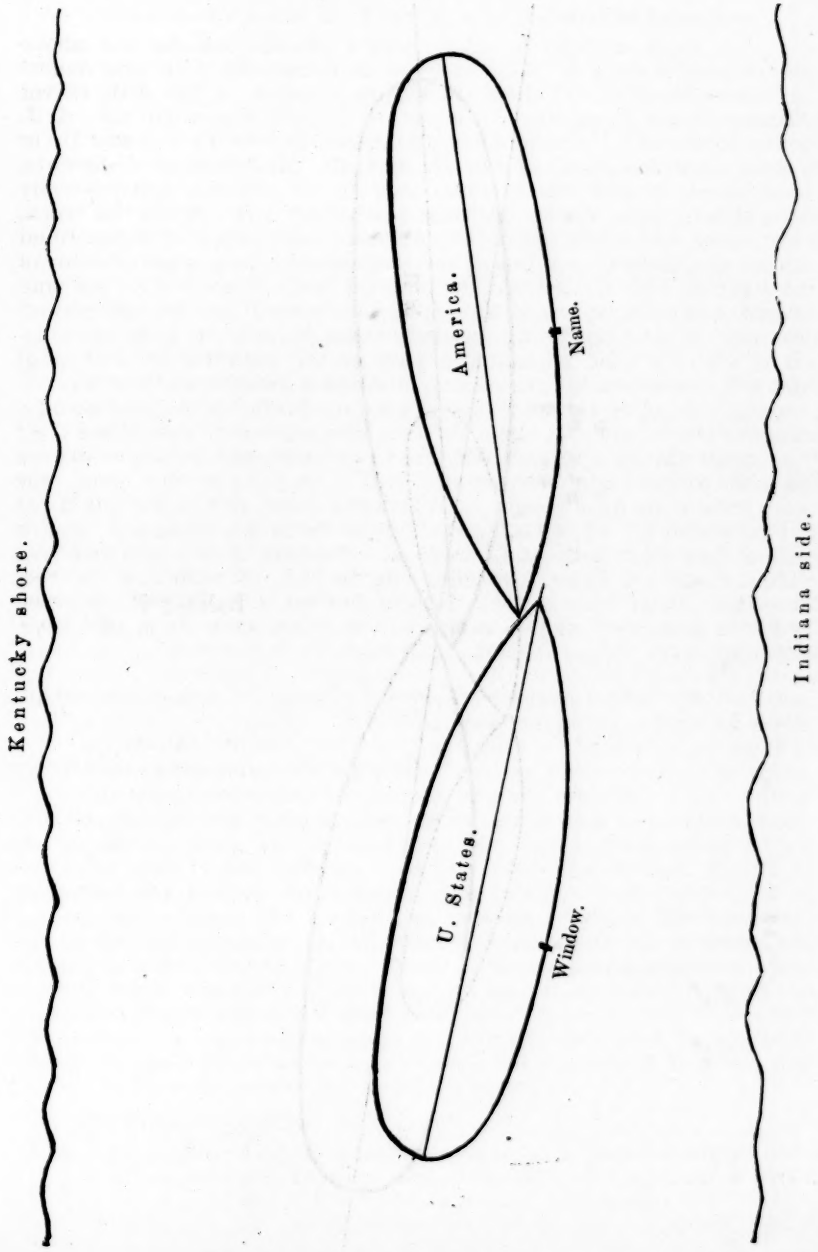
In witness whereof witness my hand and natarial seal, given at Cincinnati this 28th day of February, 1871.

[S. S.]

R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

The plat marked "Exhibit A" refer'ed to, and attached to the foregoing depositions, is as follows:

572 EXHIBIT A.



The plat marked "Exhibit B" refer'ed to in the foregoing depositions is as follows:

573 EXHIBIT B.

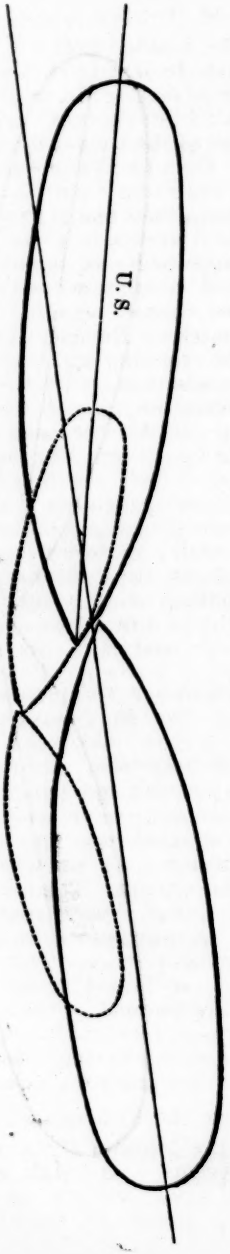


Exhibit B.

574 And the defendants, further to sustain the issues joined, on their behalf, introduced the following evidence, to wit:

Evidence of William M. Turpin.

As a witness, WILLIAM M. TURPIN, who testified as follows:

I am a steamboat pilot for a pe'iod that will be three years next May. I went first as a steersman to learn to pilot. I got a license to pilot first in 1869. I am in the packet trade from Louisville to Carrolton; piloted there three weeks. I left the mail company when 3 years was up. I was in the pilot-house of the United States—Jac' Remelein went—on watch with Remelein. Captain Wade was on the hurricane-deck in front of the pilot-house. I saw him there at the time of the collision. It was his watch. The States blew one long whistle, and after that we heard one whistle from the America, in a short time after ours. That meant all was right. Afterwards we heard two whistles from the America. Then was the first we apprehended danger. We then stopped the engines on the United States, sounded one whistle, and backed the engine immediately. Remelein blew the whistle with the
575 treadle, and rang the stopping and backing bells with his hands. The United States made four or five revolutions back. We then kept backing on the starboard engine and went ahead on the larboard. That would have a tendency to take her nearer shore. I don't remember any order to take her in. I left Mr. Remelein at the wheel and went down into the texas. I had been on the United States since the 22d May, 1868. The boats came together nearly head on, a little quartering. I made the diagram shown me (annexed to my deposition) in this case, taken in Cincinnati. It shows how they came together as near as I can show it. I think the collision pushed the States a little nearer in towards the Indiana shore; can't say how much or give an idea. The boats were right in the channel when they came together. I can't say what headway our boat had. She had made five revolutions back, and seven would stop her headway. Remelein rund the bells strong quicker than usual. I noticed the fire immediately after the collision. It progressed very rapidly. The wind was quartering a little on shore, up stream. It was a dark, gray night. There was no snow or
576 sleet at the time. It had been raining before that. The collision happened about eleven and one-half o'clock. I am familiar with the channel and shore there; have been up and down there every day for three years. The channel runs into the Indiana shore a little above the place of the collision. At low water the channel is 50 or 60 yards from the Indiana shore there. The collision took place south of the low-water line. The United States sunk south of the low-water line, on the Indiana side. A mile above the place of the collision, the channel is nearer the Kentucky shore. There is a long crossing. The stage of water was about 13 or 14 feet on the grassy flats. I could tell the United States was in the channel by the land-marks and by the way she handles. A big, long boat like that labors if she is not in the channel. With boats like that we try to shape the channel, in that stage of water. She makes better time and runs easier.

On cross-examination the witness said:

I am now employed on the steamer Leonora. I have no expectation or arrangement to return to the Mail Line. I never had a berth
577 in the Mail Line. I made one trip on the Dumont; run on the Lytle in Dec. last, as steersman, not under pay. Captain Wade

is on the Robert Mitchell, down the river. I haven't seen him for a month before Dec., 1868. I was steersman in the Mail Line for seven months. Remelein was in the pilot-house all night, after supper, until after the collision. Captain Wade had not been in the pilot-house that night. I don't know where he had been for 30, 20, or 5, or 2 minutes before the collision. The signal-lights of the America first attracted my attention. I saw them before I heard the whistle second. Before the whistles the States had been running 12 or 13 miles an hour. I can't say where the States was in the river; whether opposite Sunman's house or not, when she blew the first whistle. I never had tried experiments before that. I had seen experiments tried with the Lytle, a boat about the power of the States. I don't remember whether the wheel was hard to the starboard or the larboard at the time of the collision. It pressing to the starboard would have a tendency to turn the States towards the Indiana shore. The boats were 300 or 400 yards apart when the last 1 and 2 whistles were blown. I stayed in the pilot-house
578 until the States was headed up st'eam. I looked into the texas room to see if Noble was there. Striking on the larboard would turn the bow, to some extent, toward the Indiana shore. The America cut through the guards, which were made of oak, mostly. There was iron on top to keep from weaving. The deck was made of oak. I never saw the hull or wreck after the collision. Can't state the position of the boat while locked, exactly. Remelein rang the two stopping bells. Can't state the position of the wheel, nor can I say how soon the engines could have stopped. Suppose it would take 6 or 8 seconds. There was no signal given on the gong. He rung two stopping bells. The checking bell rang immediately; that was to reverse the engines; then a backing bell—stopping, checking, backing. The wheel had made four or five revolutions back. I suppose the States had some headway; so had the America. I heard the backing bells. By the channel I mean the deepest water. The moon was up, but it was quite dark. I am not positive it was not raining, but it was very cloudy and gray. I knew the channel there for seven months. Couldn't tell the place of low water there in '56, '57. I ran on the R. R. Hudson, steamer, in low
579 water a month, in July, before the collision. Boats like these well run to deep water, will labor more in shoal than in 12 feet. There is a shore bar opposite the States. When I speak of 50 or 60 yards I mean the low-water channel is 50 or 60 yards from the shore. There is a large stone at the head of the grassy flats. I guess there was 13 or 14 feet water there. I have known it to down to 32 inches there. I have seen it sound at three feet.

On re-examination the witness said:

I am almost sure the deck of the States was oak. Captain Wade might stand on the hurricane-roof, forward of the texas, and not be seen by the pilot.

Robert Riley's ev.

And the defendant further introduces, as a witness, ROBERT T. RILEY, who testified as follows:

I was clerk on the United States since Aug. 2d, 1864; have been constantly connected with the river, for 8 years. For seven years prior to that I was connected with the Cincinnati custom-house. In
580 1849, '50, '52, & '53, I was a clerk in the New Orleans trade. I was on the United States at the time of the accident; was in my room. I did not see the boats before they came together. My room

was in the extreme upper corner on the starboard side. I came down stairs immediately, on the inside—down the larbord side—went to the office to get the register and things in the office. I could not get in the office, for the flames from the front of the office rushed in. I went back calling out fire to wake the passengers. The cabin was taking fire and the smoke was very intense. I then went up into the 2d cabin and went out on the larboard side. Did all I possibly could to wake passengers and get them off. I then jumped off with the life-preservers. I could not swim. Each room had two cork life-preservers, put on like a jacket—had yawl, 2 life-preservers, floats, lying round on roof. I stood on the starboard-guard throwing off shutters to save passengers in the water; all the shutters could be lifted—made to lift off; there was 140 doors, two shutters to each door; don't know how many thrown off. I think she was perfect as to buckets, hose, &c., to prevent accident.

The captain was very cautious about these things. There was
581 texas-doors and shutters, besides the doors I mentioned. I judge the America was the largest. When the boats swung round, I took her distance from 150 to 200 yards from Inda. shore. When I first went out I could not see very well; wind came from the Ky. shore and blew the smoke in the way. I came by there next morning—think she was 100 yards Ind. shore; that at the time of the collision. I think I was the last man off her. I was on side next to Ky. shore; when I got to the other side I saw or heard one. I had just left Mr. Sappington; he was sitting at the first table forward of the middle gangway; don't think I had left him more than 6 minutes. I saw four *of* five ladies in the cabin; ordered them out on the guards. Did not see Mr. Sappington, or any one I knew. Did not see the chambermaid. It was not my duty to assign rooms. Know Mrs. Pearce. Don't remember what room she had. Her boys were in same room with her—one aged about 10 and the other about 12 years. I went to Louisville to get the boy. He is at school at Shelbyville. I got Captain Carter to go and see his parents, who refused to let him come. Captain Carter is connected with Mail Line Company. The chambermaid had
582 only made one trip previous to that. She has had no connection with the line since. She was a black woman. Have seen her since. Don't know where she resides. If she had been back there, when I went to wake passengers, I should have certainly seen her. Did not see Mrs. Pearce. Heard woman screaming, &c. Heard no on' screaming fire. When I got off America was lying 150 or 200 yards below the States, at Ind. shore. Don't know whether she had previously been to shore or not. Witness' *b*ooks at rolls & papers issued from custom-house. They are all regular papers. Have compared them with duplicate copies at the custom-house. I compared the papers of the States—original one, burnt up. I did not compare the America's papers. Road upon the bank was muddy, about ankle-deep. Starboard wheel was going ahead while she was inclined to slow, head up stream. I saw current coming out from under the wheels. The boats were built at Cin'ti. Portion of owners reside at Cin'ti, portion at Louisville, and part *of* Aurora—all old citizens of these places. Boats never belonged to any one else but the Mail Co.

On cross-examination, the witness said:

583 I was examined at U. S. inspector's; was examined in superior court of Cin'ti twice; went after the boy Pearce; have acted as agent of the Co. I jumped out of bed immediately after the collision, pulled on my pants, and passed out of my room, right-hand side, up-

per tier. I put life-preserver from aft guard or larboard side, twisted open a door; very short time—don't think 5 minutes—till I jumped out of bed till I went out on starboard; flames coming into office-windows; cabin filling with smoke rapidly. Stern was up stream when I went out. I did not testify before that starboard was on Ky. side. First I saw of America was her stern. I did not see bar-tender; what counsel read was hall-tender. This conversation was on starboard side, lower side. I only discovered that the America's fancy-work was on fire. The America dropped down between shore and States. I was then on the Ky. side; could not say whether she rubbed the States in passing down. My impression is she bumped. I jumped overboard after the America landed below. Life-boats of States were burned. I saw some negroes in the yawl, and called to them to get out; it afterwards fell down, and floated
584 off below. I did not see Captain Wade get a man out of water. He was the first person I saw to know after I got on shore. I think I was on board about 10 minutes after I got out of bed. Flames were coming around the stem when I got off; think wind was blowing, quartering on Ind. shore. I put life-preservers on; used my hands to get ashore. I retreated out of cabin on account of the smoke. I heard ladies screaming, "What can be done for us?" I told them to get out on the guards. The elder Pearce boy is at Shelbyville; don't know of the chambermaid being on the Buell. The State' was and is a night-boat, except Sundays. I know nothing about river at point of collision. I compared the papers at the custom-house with one of the attachees of the custom-house, an old gentleman. I don'k know his name. The papers refer'ed to are marked A, B, C, & D. Breadth of steamboat means the hull or beam, not the width from out to out.

Re-ex.:

The license is issued every year; enrollment good for life-time of the boat.

Was whisky received at Aurora?

Did not see Capt. Pearce.

585 *Evidence of Dr. Dauglade.*

Defts. also introduced Dr. DAUGLADE, who testified as follows:

Am physician for 18 or 20 years; have seen the U. S. To Mr. Harrington: Have been in 2 or 3 times; heard some mate and Mr. Lew and some others testify. If cabin of such a steamer on fire back of the wheel-house could scarcely survive at all. Put a person right in the body of a flame, and they can get in breath afterwards. Persons might have presence of mind enough to get out. If perfectly enveloped in a heavy flame, don't think he could escape at all, especially in a steamboat. When a person right up to a flame, and hollowing, it would depend upon intensity of heat; if in the burning cabin and heat of air all confined to the could *could* not state how long—not very long.

X-ex.:

If all doors and windows open, currents of air would proba'ly control the flames to some extent; if he breathed air 400° F., could not survive; by putting wet cloths or sponge upon mouth could survive a minute; in rushing into the flames very apt to be spasmodic action of nerves and muscles. They may rush in and scream, and yet sur-
586 vive. Heated air and flame rises; carbonic acid gas would tend to go down. If a current of a' sweeping along on floor, persons might live then.

Re-ex.:

In case cabin burning back towards stern, his living or not would depend upon the intensity of the heat.

Defendants' counsel here read that portion of the affidavit of C. G. Pearce which states what he expected to prove by Robert Nelson:

"That said witness will testify that he was a professional river-pilot; that he was a passenger on the steamer United States on the night of the 4th of December, 1868, at the time of the collision, and that the collision occur'ed on the Ohio River, within the bound'ries of Kentucky, and that said steamer United States, at the time of the collision, was not at or near the Indiana shore until she was run towards the same after the collision for the purpose of trying to safe the passengers on board said steamer."

587 Mr. RILEY was recalled, and testified that he knew Robert Nelson, and that he roomed that night with Joseph McCammant.

See Mr. McCammant's testimony as to Nelson.

Defendants then offered and read in evidence the license to carry gunpowder and other explosive material covering the time of this accident, dated Feb'y 22d, 1868.

License to carry gunpowder.

License to carry gunpowder or other explosive or combustible materials, in accordance with the act of Congress relating to steamboats.

STATE OF OHIO,
District of Cincinnati:

Application having been made to the subscribers, inspectors for the said district, to grant license for the steamer United States, of Cincinnati, in the State of Ohio, whereof is master, to carry oil of vitroil, crude and refined patroleum, coal-oil, friction-matches, spirits of turpentine, we have this day carefully examined said vessel, and find that she is provided with suitable space on dect for the transportation of the articles herein named—oil of vitroil in boxes lined with sheet-iron; and on the main deck, crude and refined patroleum, coal-oil, friction-
588 matches, spirits of turpentine; and all on the main deck or guard, spirits of turpentine in iron or tin vessels, and in all respects conformable to law.

We do, therefore, hereby authorize the said vessel to carry as freight the above-enumerated articles, or any of them, those of each descriptic n to be secured in said space, and as herein specified, separately from each other, in proper compartments containing no other article, and to be kept at least twenty feet from any fire.

Given under our hands and seals this 22d day of Feb'y, A. D. 1868.

[S. S.]

C. W. FISHER. [SEAL.]
H. H. DEVSON. [SEAL.]

I, R. H. Stephenson, surveyor of customs of the United States at the port of Cincinnati, in the State of Ohio, do certify that the within and foregoing is a full, true, and complete transcript and copy of the powder-license granted the steamer United States, navigating the Ohio River, taken from the original thereof in my office, where the same is and re-

mains, and which remains in my office and in my custody by laws of the United States, I being the proper custodian thereof.

589 Witness my hand an' the seal of said office this 20th day of March, 1871.

[L. S.] R. H. STEPHENSON,
Surveyor.

CUSTOM-HOUSE,
Cincinnati, December 30th, 1870.

I certify the within to be a copy of the original on file in this office.
J. L. WARTMANN,
Dept. Surveyor.

Defendants then offered and read the inspector's certificate of the steamer United States, dated April 10th, 1868.

Inspector's certificate of steamer United States.

PASSENGER STEAMER.

By authority of the United States of America.

No. 69.] INSPECTOR'S CERTIFICATE. 4 inspection.

Steamboat United States. Certificate expires April 10th, 1869.

STATE OF OHIO,
Hamilton County, District of Cincinnati, ss:

590 Application having been made in writing to the subscriber, inspector for this district, to inspect the steam'r United States, of Cincinnati, in the State of Ohio, whereof owner and F. Carter is master, and having performed that servive, now on the 10th day of April, 1868, do certify that she was built at Cincinnati, in the State of Ohio, in the year 1865, is of 1106$\frac{74}{100}$ tons burthen, and is in all respects staunch, seaworthy, and in good condition for navigation, having suitable means of escape, in case of accident, from the main to the upper deck; that she is provided with 140 state-rooms and a total of 314 berths for cabin-passengers, and his berths for deck or steerage passengers; that she is a steamer sailing to and from Cincinnati and Louisville, a distance of 140 miles and upwards, and is permitted to carry 50 deck or steerage passengers.

That she is provided with seven cylindrical high-pressure boilers, 26 feet long and 38 inches diameter, (with 214 $\frac{1}{2}$-inch flues in each, of iron $\frac{1}{4}$ of an inch in thickness,) constructed of Shoenberger & Co., Pittsburgh, Pa., C. H. No. 1 iron of $\frac{5}{16}$ of an inch in thickness and made
590 by Joseph Mitchell, of Louisville, Kentucky, in A. D. 1866, and are in all respects conformable to law. That said boilers have been subjected to a hydraulic pressure of 225 pounds to the square inch, and the maximum working-power allowed was 150 pounds to the square inch, determined by the rule prescribed by law. That there is three safety-valves, with an aggregate area of 71^{02} square inches. That the load prescribed to each is such as to allow 150 pounds pressure to the square inch, and left in charge of the engineer; and one locked safety-valve of 2$\frac{21}{40}$ inches diameter, loaded to 152 pounds pressure to the square inch; and has two supply-pipes of $\frac{3}{4}$ inches diameter; and has suf-

ficient means to keep the water at all times and under all circumstances up to four inches over the flues; has two pressure engines of 26 inches diameter of cylinder and 10 feet stroke; has feed-pumps of inches plunge, with inches stroke, worked by engines; has two independent steam feed-pumps 6 inches diameter, 15 inches stroke; has 16 *guage* cocks in the aft end of the boilers; has seven water-*guages* and two steam-*guages*, all properly secured and arranged; has alloyed metal on the flues which fuse at 442° on the
592 outside boilers and at 442° on the inside boilers; has three fire-pumps, viz, fo'ward pump 4 inches diameter and 6 inches stroke, worked by hand; after pump 4 inches diameter 6 inches stroke, worked by hand; midship pump, 6 inches diameter 15 inches stroke, worked by doctor; all double acting, and has 580 feet of hose, 51 buckets, and 10 axes; has two life-boats, in good order, and one yawl; has 314 life-preservers, viz, cork-jackets kept in the cabin state-rooms; has additional steering-apparatus, independent of the steering-wheel. And we further certify that the equipments of the vessel throughout, including pipes, pumps, and other means to keep the *to keep the* water up to the point aforesaid; hose, boats, life-preservers, signal-lights, anchors, 6 floats, wire tiller-rope, and other things are in conformity with the provisions of the law; and we declare it to be our deliberate conviction, founded upon the inspection we have made, that the vessel may be employed as a passenger-steamer, upon the water herein specified, without peril to life from imperfections of form, materials, workmanship, or arrangements of the several parts, or from age or use. And we further certify
593 that the vessel is to run only within the following limits, to wit, from Cincinnati, Ohio, to Louisville, Kentucky, touching at the intermediate places and back; also to other ports and States usually navigated by boats of the same class.

(Signed) H. H. DEVENNY, [SEAL.]
Inspector of Hulls.
C. W. FISHER, [SEAL.]
Inspector of Boilers.

STATE OF OHIO, *Hamilton County, ss:*

Personally appeared before me the undersigned H. H. Devenny and C. W. Fisher, duly appointed inspectors of steam-vessels for the district of Cincinnati, and made solemn oath that the annexed certificate of inspection is just and true.

Sworn and subscribed before me this 10th day of April, 1868.

(Signed) W. B. GLAZIER,
Deputy Surveyor U. S. Customs.

I hereby certify that the above is a true copy of the original on file in my office.

CUSTOM-HOUSE,
Cincinnati, the 10th day of April, 1868.

594 I, R. H. Stephenson, surveyor of customs of the United States at the port of Cincinnati, in the State of Ohio, do hereby certify that the within is a full, true, and complete transcript and copy of the inspector's certificate granted the United States, navigating the Ohio River, taken from the record thereof in my office, where the same is and remains of record, and this record is and remains in my office and in my

custody by the laws of the United States, I being the proper custodian thereof.

Witness my hand and the seal of said office this 20th day of March.

[L. S.] R. H. STEPHENSON, *Surveyor.*

Defendants then offered and read the license of the United States to carry on commerce in evidence, dated the 7 November, 1868.

License of the United States to carry on commerce.

License of a vessel above twenty tons to carry on the coasting-trade for one year.

DISTRICT OF THE PORT OF CINCINNATI:

595 In pursuance of the act of Congress of the United States of America entitled, "An act for enrolling and licensing ships or vessels to be employed in the coasting-trade and fisheries and for regulating the same," approved February 18th, 1793; and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6th, 1864.

No. 163.

C. G. Pearce, president of the Louisville and Cincinnati U. S. Mail-Line Co., and R. M. Wade, having given bond that the passenger and freight steamer called the United States, whereof the said R. M. Wade is master, burthen eleven hundred and six $\frac{74}{100}$ tons, as appears by her certificate of enrollment, issued and dated at the port of Cincinnati on the 3d day of May, in the year one thousand eight hundred and sixty-five, No. 74, shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded, and having also sworn that this license shall not be used for any other vessel or for any other purpose than is herein specified, license is hereby granted for the said steamer United States to be employed in

596 conveying in the coasting-trade for one year from the date hereof, and no longer.

Given under my hand and seal of office, at the port of Cincinnati, this seventh day of November, in the year one thousand eight hundred and sixty-eight.

GEO. W. NEFF,
Surveyor of Customs.
By W. B. GLAZIER, *Dep.*

CUSTOM-HOUSE,
Cincinnati, Nov. 29, 1869.

I hereby certify this to be a true copy of the original on file in this office.

J. L. WARTMAN,
Dept. Surveyor.

I, R. H. Stephenson, surveyor of customs of the United States at the port of Cincinnati, in the State of Ohio, do certify that the within and foregoing is *is* a full, true, and complete transcript and copy of the license granted the steamer United States, navigating the Ohio River, taken from the record thereof in my office where the same is and

597 remains of record, and which record is and remains in my office and in my custody by laws of the United States, I being the proper custodian thereof.

Witness my hand and the seal of said office this 20 day of March, 1871.

R. H. STEPHENSON,
Surveyor.

Defendants then offered and read in evidence the enrollment of the United States, dated May 3d, 1865, and proved by Robert Riley that he had been connected with the custom-house for many years prior to this occasion, and was familiar with their usages and rules, and that a license was issued every year, but that an enrollment was only issued once, and lasted the life-time of the vessel, unless there was a change of owners.

Enrollment of steamer United States.

No. 74. Enrollment permanent.

598 Enrollment in conformity to an act of Congress of the United States of America entitled "An act for enrolling or licensing ships or vessels to be employed in the coasting-trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurment of tonnage of ships and vessels of the United States," approved May 6th, 1864.

Thomas Sherlock, of Cincinnati, having taken or subscribed to the oath required by the said act, and having sworn that the United States Mail Line Co., of Z. M. Sherley, of Louisville, is trustee, are citizens of the United States, sole owners of the ship or vessel called the United States, of Cincinnati, whereof David Whitten is at present master, as he hath sworn, is a citizen of the United States of America, and that the said ship or vessel was built at Cincinnati, in the State of Ohio, in the year 1865, as appears from certificate of admeasurement No. 72, dated and issued at the port of Cincinnati, May 3d, 1865, and having certified that the said ship or vessel has three decks and no mast, and

599 that her length is $292\frac{6}{10}$ feet, her breadth is $41\frac{8}{10}$ feet, her depth $7\frac{1}{10}$ feet, her height feet, and that she measures eleven hundred and six tons and seventy-four hundredths, viz:

	Tons.	$\frac{1}{100}$
Capacity under tonnage-deck	644	34
Capacity between decks and above tonnage-deck	463	40
Total tonnage	1,106	74

That she is a steamer, has cabin on deck, transom-stern, and fancy head; and the said Thomas Sherlock having agreed to the description and admeasurement above specified, and sufficient security having been given according to said act, the said steamer United States has been duly enrolled at the port of Cincinnati.

Given under my hand and seal of office, at the port of Cincinnati, this 3d day of May, in the year one thousand eight hundred and sixty-five.

J. WILSON JOHNSON,
Dep. Surveyor of Customs.

Change of master.

DISTRICT OF MISSISSIPPI,
Port of Cincinnati, Sept. 17, 1868.

600 R. M. Wade, having taken and subscribed the oath required by law, is at present master of the within-named vessel, in lieu of David Whitten, late master.

GEO. W. NEFF,
Surveyor of Customs.

CUSTOM-HOUSE, *Cincinnati, Nov.* 29, 1869.
I certify this to be a true copy of the original on file in my office.
J. L. WARRTMAN,
Dep'y Surveyor.

Defendants also offered and read in evidence the inspector's certificate of the steamer America, dated May 1, 1868.

Inspector's certificate of steamer America.

PASSENGER-STEAMER.

By authority of the United States of America.

No. 70.] INSPECTOR'S CERTIFICATE.

2d inspection.

Steamboat America.—Certificate.

STATE OF OHIO,
Hamilton County, District of Cincinnati, ss:

601 Application having been made to the subscribers in writing, inspectors for the district, to inspect the steamer America, of Cincinnati, in the State of Ohio, whereof the Cincinnati and Louisville Mail Packet Co. are owners, and David Whitten is master, and having performed the service, now, on this 1st day of May, A. D. 1868, do certify that she was built in Cincinnati, in the State of Ohio, in the year 1867; is of 1,256 $\frac{75}{100}$ tons burthen, and is in all respects staunch, sea-worthy, and in a good condition for navigation, having suitable means of escape in case of accident, from the main to upper deck; that she is provided with 153 state-rooms, and a total of 306 berths for cabin-passengers, and has berth for deck or steerage passengers; that she is a steamboat sailing to and from Cincinnati & Louisville, a distance of 150 miles or upwards, and is permitted to carry not exceeding 50 deck or steerage passengers; that she is provided with 8 cylindrical high-pressure boilers, 26 feet long and 37 inches diameter, (with 214 inch flues in each, of iron $\frac{1}{4}$ of an inch in thickness,) constructed of Shoenberger and
602 Co. Pittsburgh, Pa., C. H. No. 1 iron of $\frac{3}{10}$ of an inch in thickness, and made by McIlvain & Spugal, of Cincinnati, Ohio, in A. D. 1867, and are in all respects conformable to law; that said boilers have been subjected to a hydraulic pressure of 225 pounds to the square inch; and the maximum working-power allowed was 150 pounds to the square inch, determined by the rule prescribed by law; that there are 3 safety-valves, with an aggregrate area of 84^{81} square inches; that the load prescribed each is such as to allow 150 pounds pressure per square inch,

and left in charge of the engineer; and one locked safety-valve, of 6 inches diameter, loaded to 150 pounds pressure to the square inch, and has two supply-pipes, of 3½ inches diameter, and has sufficient means to keep the water at all times and under all circumstances, up to four inches over the flues; has two steam-pipes, of 8½ inches diameter; has two pressure-engines, of 30 inches in diameter of cylinder, and 10 feet stroke; has feed-pump, of inches plunge, with inches stroke, worked by engine; has two independent steam feed-pumps 7½ inches diameter 14 inches stroke; has 24 *guage*-cocks in the after-end
603 of boilers; has *has* 8 water-*guages* and one steam-*guage*, all properly secured and arranged; has alloyed metal on the flues, which fuses at 422° on the outside boilers, and 442° on the inside boilers; has three fire-pumps, viz, forward pump, 4 inches diameter, 6 inches stroke, after pump 4 inches diameter, 6 inches stroke, both worked by hand; mid-ship pump, 4 inches diameter, 14 inches stroke, worked by doctor, all double-acting, and has 600 feet of hose, 55 buckets, and 11 axes; has two life-boats, in good order, and one yawl; has 306 life-preservers, viz, cork-jackets, kept in the cabin; has additional steering-apparatus independent of the steering-wheel.

And we further certify that the equ'pments of the vessel throughout, including pipes, pumps, and other means to keep the water up to the point aforesaid, hose, boats, life-preservers, signal-lights, anchors, box-floats, wire tiller-rope, and other things in conformity with the provisions of the law, and that we declare it to be our deliberate conviction, founded upon the inspection we have made, that the vessel may be employed as a passenger-steamer upon the waters herein specified,
604 without peril to life from imperfection of form, materials, workmanship or arrangement of the several parts, or from age or use; and we further certify that the said vessel is to run only within the following lines, to wit, from Cincinnati, Ohio, to Louisville, Kentucky, touching at the intermediate places and back; also to other ports and water' usually navigated by boats of the same class.

(Signed) H. C. DEVENING, [SEAL.]
Inspector of Hulls.
C. W. FISHER, [SEAL.]
Inspector of Boilers.

STATE OF OHIO, *Hamilton County, ss:*

Personall' appeared before me the undersigned H. H. Devering and C. W. Fisher, duly appointed inspectors of steam-vessels for the district of Cincinnati, and made solemn oath that the annexed certificate of inspection is just and true.

Sworn to and subscribed before me this 1st day of May, A. D. 1868.

(Signed) W. B. GLAZIER,
Deputy Surveyor U. S. Customs.

I hereby certify that the above is a true copy of the original in this office.

605 CUSTOM-HOUSE,
Cincinnati, the 1st day of May, 1868.

CUSTOM-HOUSE,
Cin'i, Dec. 31, 1870.

I certify the within to be a true copy of the original on file in this office.

J. S. HARTMAN,
Dep'y Surveyor.

I, R. H. Stephenson, surveyor of customs of the United States at the port of Cincinnati, in the State of Ohio, do certify that the within and foregoing is a full, true, and complete transcript and copy of the inspector's certificate granted the steamer United States navigating the Ohio River, taken from the record thereof in my office, where the same is and remains of record, and which record is and remains in my office and in my custody by laws of the United States, I being the proper custodian thereof.

Witness my hand and the seal of said office this 20th day of March, 1871.

[L. S.] R. H. STEPHENSON,
Surveyor.

Defendants also offered and read in evidence the license of the steamer America to carry on commerce, dated 29 April, 1868.

606 License of a vessel above twenty tons to carry on the coasting-trade for one year.

License of steamer America to carry on commerce.

DISTRICT OF THE PORT OF CINCINNATI:

In pursuance of an act of the Congress of the United States of America entitled "An act for the enrollment and licensing of ships or vessels to be employed in the coasting-trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6th, 1864.

David Whitten, of Cincinnati, O., having given bond that the steamer called the America, whereof the said Daniel Whitten is master, burthen twelve hundred and fifty-six $\frac{75}{100}$ tons, as appears by her certificate of enrollment, issued and dated at the port of Cincinnati, on the 27th day of April, in the year one thousand eight hundred and sixty-seven, No. 183, shall not be employed in any other trade while this shall continue in force, whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall
607 not be used for any other vessel or for any other employment than is herein specified, license is hereby granted for the said steamer America to be employed in carrying on the coasting-trade for one year from the date hereof and no longer.

Given under my hand and seal of office at the port of Cincinnati this 29th day of April, in the year one thousand eight hundred and sixty-eight.

[L. S.] GEO. W. NEFF,
Surveyor of Customs,
By W. B. GLAZIER, *Dep'y.*

CUSTOMS-HOUSE,
Cincinnati, Nov. 29, 1869.

I hereby certify this to be a true copy of the original on file in this office.

J. S. WARTMAN,
Dep'y Surveyor.

I, R. H. Stephenson, surveyor of customs of the United States, at the

port of Cincinnati, in the State of Ohio, d' certify that the within and foregoing is a full, true, and complete transcrip' and copy of the license granted the steamer America, navigating the Ohio River, taken
608 from the record thereof in my office, where the same is and remains of record, and which record is and remains in my office and in my custody by the laws of the United States, I being the proper custodian thereof.

Witness my hand an' the seal of said office this 20th day of March, 1871.

Defendants also offered and read in evidence the enrollment of the steamer America, dated 27 April, 1867.

Enrollment of America.

Enrollment.

Enrollment in conformity to an act of the Congress of the United States of America, entitled "An act for the enrolling and licensing ships or vessels to be employed in the coasting-trade and fisheries, and for regulating the same," approved February 18, 1793; and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

Thos. Sherlock, having taken or subscribed to the oath required by the said act, and having sworn that the United States Mail-Line Com-
609 pany, of which Z. M. Shirly, of Louisville, is trustee, are citizens of the United States, sole owners of the ship or vessel called the America, of Cincinnati, whereof David Whitten is a present master, and as he hath, as a citizen of the United States, and that said ship or vessel was built at Cincinnati, in the State of Ohio, in the year 1867, as appears by the certificate of admeasurement, No. 129, dated and issued at the port of Cincinnati, April 15th, 1867; and said certificate of admeasurement having certified that the said ship or vessel has four decks and no mast, and that her length is three hundred and two (302) feet, her breadth forty-four (44) $\frac{5}{10}$ feet, her depth seven (7) feet, and her height at midships from water-line to top of the pilot-house fifty-two (52) $\frac{5}{10}$ feet, and that she measures twelve hundred and fifty-six tons and seventy-five hundredths, viz:

	Tons.	$\frac{1}{100}$
Capacity under tonnage-deck	699	37
Capacity between decks and above tonnage-deck	557	38
Total tonnage	1,256	75

That she is a steamboat; has side-wheels, cabin on deck, transom-stern, and plain head.

And the said Thomas Sherlock, having agreed to the description
610 and admeasurement above specified, and sufficient security having been given in accordance to the said act, the said steamer America has been duly enrolled at the port of Cincinnati.

Given under my hand and seal of office this 27th day of April, in the year one thousand eight hundred and sixty-seven.

GEO. W. NEFF,
Surveyor of Customs.
By W. B. GLAZIER, *Dep.*

CUSTOM-HOUSE,
Cincinnati, Nov. 29, 1869.

I hereby certify this to be a true copy of the original on file in this office.

J. L. WARTMAN,
Dep'y Surveyor.

Defendants then offered and read in evidence the depositions of Boyd Gough, O. P. Thorp, Moses Pickelheimer, John B. Taylor, William Butler, Stappleton Dansford, Oliver H. Noble, & Marr S. Turpin, taken on or about*h* the 14th day of Dec., 1870.

611 Depositions of sundry witnesses hereinafter named, taken before me, R. S. Fulton, a notary public, within and for the county of Hamilton, and State of Ohio, at the office of Messrs. Lincoln, Smith & Wanock, attys., N. W. cor. Third and Walnut st'eets, in Cincinnati, Ohio, beginning on the 14 day of December, A. D. 1870, between the hours of 6 o'clock a. m. and 6 o'clock p. m., in pursuance of the annexed notice and dedimus, to be read in evidence on behalf of the defendants in the said action therein-named.

Dep. of Boyd Gough.

BOYD GOUGH, of sound mind and lawful age, being by me first duly examined, caut'oned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows, to wit:

Examination-in-chief:

Questions by Jas. Warnock, esq.

1. Int. State your name, age, residence, and occupation; how long you have followed your occupation and where?

Ans. My name is Boyd Gough. I am sixty-two years of age. I reside in Newport, Kentucky. I am steamboat mate by occupation; that is what I used to follow, am not now. I followed that occupation

612 about thirty-four years, between Pittsburgh & St. Louis, from Cincinnati to New Orleans, and followed it for about twenty years, most of the time in the mail-trade between here and Louisville.

2. Int. Were you on the America or the United States on the night of the collision on the night of the 4th of December, 1868? If so, give a statement of what you saw and what took place from your own observation. State where the collision took place with reference to the low-water line, and where the United States was burned and sunk.

Ans. I was on the America on that night, and was mate of her at that time. I was asleep when the boats first came in sight. The whistles and the ringing of the bells awakened me. I jumped up and ran out on the hurricane-roof, and the boats struck one another just as I opened the door. I ran back into my room again put on my boots, throwed a coat over my shoulders and ran down below to see what damage had been done. The United States was all aflame fo'ward and p'etty much all over before I got down stairs. She burned like powder. There

613 was some cotton on fire on our boat which we got p'etty near extinguished, when they hollowed to us that the cabin was aflame and to come away. We left then our boat, went alongside the United States to take the passengers off, and the wind blew the flames of the United States across our boat. The wind was blowing from the Kentucky side, and we went along side between the United States and the Indiana shore.

The collision took place in the channel of the river. I think about one third of the distance from the Indiana shore to the Kentucky shore. The United States sunk about opposite the middle of that bar there, about one hundred and fifty yards from the Indiana shore, and burned up there. She sunk and burned up south of the low-water line on the Indiana side. It was about fourteen (14) or fifteen (15) feet water where she sunk. It takes about nine (9) feet of water to cover her deck, and there was at least five (5) feet of water on her deck after she sunk between five (5) feet and six (6) feet.

Cross-examination:

Questions by Charles A. Korbly, esq., of counsel for plaintiff:

614 1. X-int. What whistle did you hear?

Ans. I heard our boat blow two whistles distinctly, the last time. The first time I was just waking up and don't know how many whistles blew. I heard some other whistles from the other boat, but don't know how many there were. There was a good deal of confusion on our boat, and the wind was blowing up st'eam quartering across the river, and blew the sound away from us.

2. X-int. How were the boats lying with reference to each other when you first saw them? Had the United States turned her head up st'eam?

Ans. When I first saw them the United States was quartering with her head towards the Indiana shore and down st'eam. The America was lying nearly st'aight with the Indiana shore. They were backing on our boat at the time they struck. When I first got up they were backing on our boat, but our headway was not checked up enough to p'event the collision. I couldn't tell exactly about the bows being

615 together for I was back on our boat and from where I saw them I could not see down fo'ward.

3. X-int. How far below Eli Rayl's house did the collision take place?

Ans. Well, I suppose it was a quarter of a mile or thereabouts; the boats floated down a little piece after they struck; I don't know how far; I didn't notice the house that night.

BOYD COUGH.

Deposition of O. P. Thorp.

O. P. THORP, of sound mind and lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows, viz.:

Examination-in-chief:

Questions by James Warnock, esq., of counsel for defendants.

1. Int. State your name, age, residence, and occupation; how long and where you have followed your occupation?

616 Ans. O. P. Thorp is my name. I was born in 1818. I reside in Cincinnati, Ohio. I am a ship-carpenter by occupation. My present occupation is that of superintend't of the Miami Railway and Dry Dock Company, which position I have had for about seven years. I have followed my occupation *and* the river in various capacities, from deck-hand to captain, ever since I was twelve years old. I have followed my occupation principally in Cincinnati.

2. Int. State what you know about the steamboats United States and America; and if so, whether you saw them, or either of them, after the collision occurred between them on the night of the 4th of December, 1868; if you did see the United States, say how far the fire burned her, and what was the depth of the water in which she sank?

Ans. Yes; I knew the United States and America. I saw them within a day or two after the collision. I went down there within a day or two afterwards. I can only tell how far the United States was burned by what was left of her; the first substantial mark was her boilers;
617 the fire burned her baggage-room clear down; it must have burned before she sank, for it couldn't have burned any other time; the river was falling all the time, from the time of the collision until I arrived there, and when I arrived at the wreck she was still covered with water; there was between thirteen and fourteen feet of water at the forward end of her boilers on the larboard side, and that was the shoalest place; there was about fifteen feet of water at her starboard side aft of her boilers, and about seventeen feet of water at her stern; the larboard side at the forward end of her boilers was the point of the boat nearest shore; the center or keel of the boat lay nearly paral'el with the Indiana shore; after we got there the water began rising. We were delayed in going down by high wind, and the next morning after we reached there the water had commenced rising. We got a despatch from Cincinnati that the river was rising and to come home.

3. Int. Have you made any measur'ment of the timbers that were burned on the United States, ho' high they were?

Ans. Well, there was between 5½ and 6 feet above her deck
618 that was not touched by the fire; there was other places that the timbers were higher; these I mention were where the fire was nearest the deck after the mark on the boilers; that was the first place after you left the boilers where an accurate measur'ment could be made.

4. Int. What was the depth of the hold of the United States, and how much water must there have been where she sank and burned with the water five and a half feet above her deck?

Ans. The hold of the United States was seven feet deep from the top of her bottom timbers to the top of the beam, and her bottom timbers and her plank would make it a foot more; that would make the depth of the water at the shallowest place in her thirteen and a half (13½) feet at the time she sunk; the average depth was from 13½ to 17 feet on the larboard side, the side nearest the Indiana shore; the other side of the boat was in a little deeper water at the fo'ward end of her boilers, for the boilers stood up a little on her sheer; the depth of the water at the fo'ward end of her boilers could not have been less than 13½ feet or over 14 feet; the low place in her sheer was between the aft end of her
619 boilers and her engines, and from that point her sheer raised from 3½ to 4 feet from bow to stern; the water was just up to her name on the larboard side; that wheel may have been aground, and I think it likely it was; you could barely see the top of the name on the starboard side; the wheel chain-posts on the starboard side were burned off, and I think that wheel dropped down.

5 int. On which side of the low-wate' line, north or south, did the United States sink?

Ans. Well, I couldn't give a very clear opinion on that matter. I am not well enough acquainted with the shore. She was well out in the river. There was room enough for an ordinary steamboat to go between her and the Indiana shore.

Cross-examination:

Question by Charless A. Korbly, of counsel for plaintiff:

1. X-int. When did you return to raise the United States?

Ans. I never went back any more. They employed the underwriter

after that to raise her. I sent some men down there after the underwriter took the job.

620 24 int. How long was you at the place of the wreck?

Ans. We got there in the evening just before dark, and I sent some men out in a yawl to examine the break, next morning tolerably early—I don't know how early—and we left, I suppose, about 9 o'clock.

3. X int. Did you go out to the wreck yourself?

Ans. No, I didn't go out. It was a very cold morning and very slipperry. I had some men younger than myself, and I let them go out. I staid ashore, and asked them question', and told them which way to go.

O. P. THORP.

Deposition of Moses Pickelheimer.

MOSES PICKLEHEIMER, of sound mind and lawful age, being first duly examined and cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, relating to said cause, deposes as follows:

Examination-in-chief:

Questions by T. D. Lincoln, of counsel for defendants:

621 1. Int. State your name, age, residence, and occupation, and how long an' where you have followed your occupation.

Ans. Moses Pickelheimer is my name. My age is thirty-seven. I reside in Covington, Kentucky. I am a steamboat pilot by occupation, and have been piloting for twelve years. I was a steersman for a year or two before I got my papers. I have done my piloting between here and Louisville; the most of it around Cincinnati.

2. Int. Did you see the steamer United States after the sunk and her upper timbers burned off, early in December, 1868? If so, how long after she came into collision with the America? If so, what was the stage of water at that time; was it rising or falling at that time?

Ans. I saw the steamer United States after she sunk and her timbers burned off. I believe it was about two days after the collision, as near as I can tell without my pass-book. I went down with the steamer Champion. Perry Thorp, superintendent of the Miami Railway and Dry-Dock Company, went down on the Champion with me. There was about twelve feet of water in the channel at that time. I think

622 the river was falling at the time we got there. I know the river had been falling very fast before that.

3. Int. What room and water was there between the United States, as she lay at that time, and the Indiana shore, for the purpose of navigating a boat between it an' the Indiana shore?

Ans. There was plenty of room and plenty of water to run a boat, the size of the America, between the United States and the Indiana shore.

4. Int. Were you acquainted with the channel of the river and the shores along there; and, if so, how long had you been acquainted with it?

Ans. I was, and had been acquainted with it ever since I had been piloting?

5. Int. On which side of the Indiana low-water line did the steamer United States sink?

Ans. On the Kentucky side; she lay just on the inside of the channel. I don't think it ever gets dry where she sunk. The channel runs pretty close to the Indiana shore there.

623 Cross-examination:

Question by Charles A. Korbly, esq., of counsel for plaintiff:

1. X-int. Does not the channel run near the Indiana shore from a point somewhere above Rayl's, to a point about a hundred yards above where the United States sunk, and then run diagonally across the river towards the Kentucky shore?

Ans. Well, I think it runs from about the house down to where the States lay, and then makes a long crossing over towards the Kentucky shore. The States lay at just about where the channel started out.

2. X-int. How often did you see the steamer United States where she lay, before she was raised, and when did you see her last?

Ans. I did'nt see her but the one time; that was the time I have mentioned. We went for the purpose of raising her. I got there in the afternoon and came away the next morning. We examined about the wreck until about 9 o'clock the next morning, when we came away.

624 3. X-int. When you say you think the river never gets dry where she sunk, that she lay close by the channel, it is simply your judgment, formed from what you saw when you were there, is it not?

Ans. Yes, sir; that is from what I judge from seeing the boat there.

M. PICKELHEIMER.

The further taking of these depositions is adjourned until to-morrow, December 15th, 1870, to be then continued at the same place and between the same hours.

R. S. FULTON,
Notary Public.

OFFICE LINCOLN, SMITH, & WARNOCK,
Cincinnati, Ohio, December 15th, 1870.

The further taking of these depositions is continued to-day pursuant to the above adjournment of yesterday, the parties being present during the examination by their counsel.

R. S. FULTON,
Notary Public, Hamilton County, Ohio.

625 *Dep. of John B. Taylor.*

JOHN B. TAYLOR, of sound mind and lawful age, being be me first duly examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes and says:

Examination-in-chief:

Questions by T. D. Lincoln, esq., of counsel for defendants:

1. Int. State your name, age, residence, and occupation, how long and where you have followed your occupation.

Ans. John B. Taylor is my name. I am forty-six years old. I reside in Covington, Kentucky. I am a steamboat engineer by occupation. I have followed that occupation about twenty-seven (27) years, next May, I believe, on the river, principally between Cincinnati and New Orleans. I have been on the Champion No. 6 about 4 years, and she has made several trips to Louisville in that time. I used to run on the Lady Pike and Kate French, in the Cincinnati and Madison trade; some seven or eight months I have been on boats chartered to run on low water in the Cincinnati and Louisville mail-line trade.

626 2. Int. Did you see where the steamboat United States sunk on the night of the 4th of December, 1868; and if you did, what opportunity did you have of noticing where the United States law with reference to the low-water line on the Indiana shore, how long where you at the wreck, and what took you there? How long have you been acquainted with the course of the channel, the shores, and the bar along there where she lay?

Ans. Along the first part of December, 1868, the steamboat Champion went down to raise the United States, and I was on her as engineer at the time. I don't remember the day of the month exactly, but think it was the 6th of December. We got there in the evening, and remained there until the next day. We staid there long enough to sound around the boat; they were cutting pieces to put down around to stop the hole. There was so much water there, they concluded they could do nothing. Usually boats in running by there would go a little south of where the wreck lay, but she lay very near where they run. She lay at the foot of what I call Sugar Creek Beach. Well, I don't think the water ever gets so low but there would be water all around there—all around the
627 wreck. I couldn't state exactly how long I have known the channel and shores along there. When I used to run from here to Louisville I knew every place along the river; that was some twelve years ago. I don't know how long I have known the river along there.

3. Int. Have you or not known it for the last ten or fifteen years, or more?

Ans. Well, yes; I have known the river along—I—that is a gravelly shore there that don't wash.

4. Int. In what business are you now engaged, and with whom?

Ans. I am putting up machinery for Burdsall & Holly, at the Covington water-works.

Cross-examination:

Question by Charles A. Korbly, esq., of counsel for plaintiff:

1. X-int. When you say you don't think the water ever gets dry at the place where the wreck of the United States lay, is that not simply your opinion, formed from what you saw when you were there
628 in December, 1868?

Ans. I will answer it in this way: There was from 12 to 14 feet of water in the channel at Cincinnati, and I seen the measuring the water on the deck of the States, and there was six (6) feet of water on her deck, and boats from that class are from 6 to 8 feet in the hold. I never 'new the water less than sixteen (16) inches from here to Louisville in my life; and that would leave water all around her hull. I am satisfied that the river is never dry where the wreck law, and base it upon the reasons I have already stated. My opinion is formed from what I saw down there at that time.

2. X-int. Have you ever known the river down to sixteen inches between here and Louisville; if not, what is the lowest you have ever known?

Ans. I have never known it down to sixteen inches. I have known it down to seventeen inches (from what pilots told me) on the grassy flats; that is the lowest I have ever known it.

629 Re-examination by Mr. Lincoln:

1. Re. Have you or not any mark at the Champion landing to indicate the depth of the water in the river, and have you not just said that it was your opinion that the water was not more than twelve (12)

feet at the time you were at the wreck, but you were not willing to swear that it was not more?

Ans. At that time we had what we call a "Licking boulder" at the Champion landing that indicated the depth of the water at the time. I am satisfied that there was not more than twelve feet of water at the time, and that corresponds with the water-works' mark at the time.

JOHN B. TAYLOR.

Dep. of William Butler.

WILLIAM BUTLER, of sound mind and lawful age, being first sworn to testify the truth, the whole truth, and nothing but the truth relating to the said cause, deposes and says as follows, to wit:

Examination-in-chief:

630 Question by T. D. Lincoln, esq., of counsel for defendants:

1. Int. State your occupation and how long you have followed it; and what boat, if any, you are now engaged.

Ans. I am a ship-carpenter. I have followed my occupation some 25 or 30 years; ever since I was able to raise an ax and a maul. I am on the Ohio No. 4.

2. Int. State what opportunity, during your life, you have had to become acquainted with the channel, shores, line of low-water mark along the Indiana shore, on the Ohio River, where the steamer United States sunk on the night of the 4th of December, 1868?

Ans. Well, she laid about a hundred yards from the waters' edge, on the Indiana shore when we raised her. Where she sank there was fourteen feet of water. There was fourteen feet from the top of the stumps where she was burned to the bottom of the boat. There was twelve feet of water on grassy flats when she sank. When I was a bit of a boy I used to be fishing around there with and old gentleman. I fished there for several summers; that was during low water during
631 summer season I have made several trips by there. In 1864 I was in the People's Line, on the Wild Wagoner, in the Cincinnati and Louisville trade. I am not very certain of the year; think it was in 1864.

3. Int. State whether or not the river ever gets dry there where the wreck lay.

Ans. I presume not. It was 12 feet on grassy flats at the time, and to make it dry there would take the water out of the river. It was the opinion of the best pilots on the river that that was all there was on the flats at the time. I asked them when I came back.

4. Int. What occasioned your going to the wreck at that time; when did you go, and how long did you remain there?

Ans. I was sent there by the Miami Railway. I went down on the Champion No. 6, with Thorp and others, to try to raise her. I went down two days after the collision. We remained there about eight hours. We sounded around there to find out how deep the water was at the wreck. I disremember not, but I think there was eight feet of water on her deck. I went down again on the following Monday
632 on the steamer Lytle to raise her, and staid there until we raised her, and we then brought her to the Miami Railway docks.

Cross-examination:

Question by Charles A. Korbly, esq., of counsel for plaintiffs.

1. X-int. Where do you reside?

Ans. In the 17 ward, Cincinnati.

2. X-int. When did you raise the steamer United States?

Ans. In the month of December, I think it was, 1868.

3. X-int. The only means you have of knowing how much water there was on grassy flats was from what you heard others say, was it not?

Ans. Yes, sir.

4. X-int. When did you fish along there—how long ago?

Ans. I couldn't say; it has been some years ago. I was twelve or thirteen years at the time, or thereabouts. The bar is about the same it was then, but the shore has been cut away since.

633 5. X-int. What were you on the Wild Wagoner?

Ans. I was ship-carpenter on her.

his
WILLIAM + BUTLER.
mark.

Attest: R. S. FULTON,
Notary Public.

The further taking of these depositions is adjourned at this point until to-morrow, December 16, 1870, to be then resumed under the following understanding of the counsel for the parties. The notary will conduct the examination and confine the questions to what has been asked the preceeding witnesses on each side. The number of witnesses to be hereafter examined shall be limited to four. The examination shall be conducted without the interference of counsel. The depositions will be closed on Saturday, December 17th, 1870, and be mailed or put into express-office on same day.

R. S. FULTON,
Notary Public Hamilton Co., Ohio.

634 OFFICE LINCOLN, SMITH & WARNOCK,
Cincinnati, O., Dec. 16, 1870.

The further taking of these depositions is resumed to-day pursuant to the adjournment of yesterday above noted.

R. S. FULTON,
Notary Public Hamilton Co., Ohio.

J. S. Densford.—See also p. 443–541.

STAPLETON DENSFORD, of sound mind and lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the said cause, deposes as follows, to wit:

Examination-in-chief:

1. Int. State your name, age, residence, and occupation; how long and where you have followed your occupation.

Ans. My name is Stapleton Dansford. My age is forty-five past. I reside in Jeffersonville, Clarke County, Indiana. I am a ship-carpenter by occupation, and I have followed the river ever since the fall
635 of 1848. I have been a ship-carpenter 22 or 23 years on the Ohio and Mississippi Rivers and their tributaries. I have been in the mail-line trade since 1866.

2. Int. Where on *on* either the steamers United States or America at they time the' came into collision on the night of the 4th of December, 1868? If so, state what you saw and what took place under your observation. State where the collision took place, with reference to the

low-water line on the Indiana shore, and where, with reference to the low-water line on the Indiana shore, the United States was sunk and burned.

Ans. I was on the United States as ship-carpenter at the time of the disaster. The whistle woke me up and I looked out of my room in the texas, on the larboard side; the boats looked to be about 50 or 75 yards apart; I couldn't tell the distance. They came together at a small angle, and the States turned around and the two boats swung together after they struck. The collision took place south of the low-water line on the Indiana shore. The United States sunk and burned south of the low-water line on the Indiana shore in deep water.

3. Int. State whether you saw the wreck of the United States
636 after she sunk. If so, when did you see it, and state, if you know, what the depth of the water was at that time where she lay?

Ans. Yes, sir. I saw her the next day after the collision, and went out to the wreck. I went out to the wreck the next day (Saturday) to get my chest of tools, which was on the stern of the States; that was about 11 o'clock the next day. I could tell the depth of the water by the marks, and by sounding that we made at the time. The watchmen of the America and United States, were two of them, went out with me in a yawl. The stock-rail at the stern of the States was still standing, and we rowed our yawl right over it; it was four and-a-half or five feet high. My tools hung on a rack on the larboard side, aft of the wheel, about ten feet from the splash bulk-head, and they were under water; the rack was about six feet high. We made soundings at the bow of the States and on the larboard side of the wreck, between the wreck and the Indiana shore, and as near as we could make out, there fourteen, or fourteen and-a-half of water at the bow. We spoke of it at the time, and tried to ascertain the depth of the water. I
637 am satisfied she laid in 14 or 14½ feet of water. I was at the wreck of the States when she was raised. I think it was some 10 or 12 days after that accident, and from the fire-marks on the wreck I judged at the time that she sunk in between 14 & 15 feet water.

4. Int. What opportunity have you had of becoming acquainted with the channel, shores, and the low-water line along there where the wreck of the United States lay, and state whether or not, in your opinion, the river ever gets dry where the wreck of the States lay?

Ans. From passing up and down there frequently before and since the disaster. I examined the shores along there pretty close at the time we raised her. I have never seen the river dry there. I have seen the river very low, but never dry there.

Cross-examination:

1. X-int. What whistle did you hear?

Ans. I heard the States whistle. I don't know what the signal was. I didn't pay much attention to that. It woke me up.

638 2. X-int. Your opinion as to the depth of the water where the wreck lay, and as to her having sunk on the south side of the low-water line is formed from what observed at the time you were present at the wreck, is it not?

Ans. Yes, sir.

3. X-int. How far below Eli Rayl's house was it the collision took place?

Ans. The boat lay about a couple of hundred yard' below Rayl's house, I reckon. I can only judge from that.

S. DENSFORD.

Deposition O. H. Noble.—See pages 484, 464.

OLIVER H. NOBLE, of sound mind and lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the said cause, deposes as follows, viz:

Examination-in-chief:

639 1. Int. State your name, age, residence, and occupation; how long and where you have followed your occupation?

Ans. Oliver H. Noble is my name. My age is 38. I reside in Madison, Indiana. I am a steamboat mate by occupation, and have followed that occupation about 14 years, from here to New Orleans. I have been in the mail-line four years. I have been on the river altogether about 19 years.

2. Int. State whether you were or not on the steamer United States when she collided with the America, on the night of the 4th of December, 1868; if yea, state what took place from your own observation, and state on which side low-water line on the Indiana shore the boats struck, and on which side of said low-water mark the States sunk and burned.

Ans. I was on the United States as mate at the time of the disaster. The ringing of the bell woke me up; when I looked out the boats were about thirty feet apart, I suppose; they came together very quick afterwards. My son was aboard, and I ran back in the carpenter's room and woke him up; then I went into my room and dressed. When
640 I got dressed and got my boy out, the States was lying with her head up stream, quartering with her bow towards the Indiana shore, and she was all aflame forward. I did'nt notice how far the States was from the Indiana shore when the collision occurred. She was below the low-water mark on the Indiana shore, on the south side of the low-water mark; she would never get dry where she sunk.

3. Int. State whether or not you saw the wreck after the collision; if yea, when and what did you then observe with reference to the depth of the water where the wreck lay?

Ans. I did. I went home the morning after the collision, on Saturday morning, and went back again to the wreck on Sunday. From what I could then observe the wreck was on about 13½, 14, or 15 feet water. I could tell from the way the water was upon the stanchions, which were still standing. They were burned down to the water. I stayed with her all the time until she was raised.

4. Int. Was the river rising or falling when you first went back to the wreck on Sunday?

641 Ans. It was falling. The water was extremely cold; we had ice in the river.

5. Int. State whether or not, in your opinion, the river ever gets dry where the States sunk?

Ans. Never. I don't think the river ever could get dry there.

6. Int. After the wreck was raised, state if you noticed how high from the deck the fire-marks were, and state the depth of the hold of the States.

Ans. They were higher than my head. I think about 6 feet and some 3 or 4 inches high at the stern; she was burned off closer fo'ward. She was in a little deeper water at her stern. She lay pretty straight with the shore, her bow turned a little in towards the shore. I think she had a sheer of about 2½ or 3 feet fo'ward and aft. I think her hould was

about 8 feet from the top of her main deck to her floor timbers. I think the hold was about 8½ feet at her stern.

Cross-examination:

1. X-int. What whistle did you hear?

642 Ans. I didn't hear any. I heard the bells. The wire-ropes pass down through my room. The bells woke me up.

2. X-int. When was the United States raised?

Ans. I disremember. I think it was there 16 days.

3. X-int. When you say the river never gets dry where the wreck lay, you give an opinion fromed from what you observed at the time you were at the wreck, do you not?

Ans. Yes, sir; I have never seen the river dry there, and I have been by there a good many times.

4. X-int. What is the lowest stage of water you have known between here and Louisville?

Ans. I think it has been down to 22 inches. That is the lowest, I have known it, I think.

OLIVER H. NOBLE.

MANN S. TURPIN, of sound mind and lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but

643 the truth relating to the said cause, deposes as follows, to wit:

Examination-in-chief:

1. Int. State your name, age, residence, and occupation; how long and where you have followed your occupation.

Ans. My name is Mann S. Turpin. I am twenty-two years of age. I reside in Hanover, Indiana. I am steersman on the steamer Ben Franklin. I have followed my occupation in the mail-line trade two years and a half.

2. Int. Were you or not on the steamer America at the time of the disaster on the night of the 4th of December, 1868? If so, state whether you were on watch at the time the collision occurred. If you say you were on watch at the time, state when it was the collision occurred; describe the course of the channel and the course of the shores along there where the collision occurred. State whether you were familiar with the river where the disaster occurred; and, if so, where it was the United States sunk and burned up, with reference to the low-water line on the Indiana shore.

644 Ans. I was steersman on the America at the time of the disaster, and was on duty with Napoleon B. Jenkins in the pilot-house at the time the boat struck. I am familiar with the river at the place where the disaster occurred. I have been passing there nearly every day since I have been in the trade. The boats collided about fifty yards below Rayl's house, and about 80 yards from the water's edge, on the Indiana shore. There is a straigh' channel along there for about a half mile, and a long crossing above and below. The channel runs nearly east and west along there. The boats collided south of low-water mark, on the Indiana shore; and the States also sunk on the south side of low-water mark, on the Indiana shore; I am satisfied of that. I never saw the river dry there where she lay. I have seen the river pretty low.

3. Int. State whether or not you saw the wreck of the States after she sank. If so, when and how long did you remain there at that time?

Ans. I did. I went back to the wreck the next morning, Saturday, about 9 or 10 o'clock, and remained there, I suppose, an hour.

645 Cross-examination:

1. X-int. What whistles did you hear before the boats struck each other?

Ans. The first whistle I heard was the America's—two sounds. I heard one indistinct sound from the States just as we quit blowing. Then the America blew two more whistles immediately; then I heard one more whistle from the States; that was all.

2. X-int. When you say the States sunk and burned on the south side of the low-water mark on the Indiana shore, you give an opinion formed from what you saw at the wreck, do you not?

Ans. Well, I speak from what I saw of the wreck at the time I was there, and from my knowledge of the river before and since the accident. I have seen low water there before she sunk, and I have seen it there since.

3. Int. On what boat are you now running, and for whom?

Ans. I am on the Ben Franklin; she was in the mail-line trade.

MANN S. TURPIN.

646 STATE OF OHIO,
Hamilton County, ss:

I, Robert S. Fulton, a notary public within and for the above county and State, *you* hereby certify that Boyd Gough, O. P. Thorp, Moses Pickelheimer, William M. Turpin, and Mann S. Turpin, John B. Taylor, William Butler, Stapleton Dansford, Oliver H. Noble, the above deponents, were each and all by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, in the cause now pending in the court of common pleas in Jefferson County, in the State of Indiana, wherein Charles Alling, administrator of the estate of Otis B. Sappington, deceased, is plaintiff*s*, and Thomas Sherlock et al. are defendants; that the foregoing depositions were each and all written by me, in the presence of the deponents respectively, and that the deponents each subscribed their respective depositions after the same had been read over to them respectively by me; that the adverse party, the plaintiff, was present at the taking of said depositions by Charles A. Korbly, his counsel, during the examination up to the adjournment and agree-
647 ment of counsel, entered on the 15th, as above appears; and that from the time of said adjournment neither of the parties or their counsel were present during the examination; that at the close of examination, under said agreement, counsel for the defendants recalled William M. Turpin to ask a question, as above appears; that all of said depositions were taken in the law-office of Lincoln, Smith and Warnock, in Cincinnati, Ohio, on the 14th, 15th, 16th, and 17th days of December, 1870, between the hours of 6 o'clock a. m. and 6 o'clock p. m. on each of said days, and agreeably in all respects to the annexed notice, dedimus, and the aforesaid agreement of counsel for the parties; that I am not of counsel or attorney or relative of either party to said cause, or otherwise interested in the event of the same.

In testimony whereof witness my hand and notarial seal, given at Cincinnati, Ohio, this 17th day of December, 1870.

R. S. FULTON,
Notary Public, Hamilton County, Ohio.

648 Defendants then offered and read in evidence the deposition of Edward S. Wayne, taken on or about the 8th of March, 1871.

Depositions of Edward S. Wayne and T. D. Lincoln, taken before me on the 8th and 9th days of March, 1871, between the hours of 8 o'clock a. m. and 6 o'clock p. m. of said days, at the office of Lincoln, Smith and Warnock and Stephens, attorneys at law, n. w. corner Third and Walnut streets, in Cincinnati, Ohio, in pursuance of the notice hereto attached, to be read in evidence in behalf of the defendants in a certain cause now pending in the common pleas court in Switzerland County, in the State of Indiana, wherein Charles Alling, administrator of Otis B. Sappington, deceased, is plaintiff, and Thomas Sherlock et al. are defendants.

Deposition of Edward S. Wayne.

EDWARD S. WAYNE, of sound mind and lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the said cause, deposes as follows, to wit:

649 Examination-in-chief:

Question by Mr. Lincoln:

1. Int. State what is your business and how long you have followed it, and what connection you have had with chemical investigations, and for how long a time.

Ans. I am a chemist by profession, and have been for the last thirty years. I have been engaged in the study of chemistry, analytical investigations, and practical applications of chemistry, for the period above mentioned. That has been my constant daily study. I am a member of the firm of F. E. Suire & Co.

2. Int. Please state whether or not you are acquainted with the nature of oil of vitriol.

Ans. I am, with the manufacture, its properties, and uses. I have used and handled tons of it.

3. Int. Will you state how it is put up and shipped, on what part of the vessel it is now and always has been carried under the rules adopted by the steamboat inspectors of the United States, and for what reasons?

(Question objected to.)

650 Ans. Oil of vitriol is commercially put up in glass vessels of about ten gallons' capacity, called carboys, (holding about 170 pounds,) which glass vessels are packed with hay or straw in square boxes. This is the usual way of putting them up; but for shipment on steamers the boxes are lined on the inside with sheet-iron. Oil of vitriol is always carried on the decks of sea-going vessels, and on the guards or forward part of steamboats—never in the hold of either ships or steamboats, on account of danger to other freight that might occur by breakage. It is carried on the guard or deck, so that, in case of accident or breakage, the carboy can be thrown bodily overboard and damage avoided.

(Answer objected to as not responsive to the question, but only an exposition of the witness—of his theory—without answering the question.)

4. Int. What injury could it do when carried in the hold, and what when carried on the deck, as you have mentioned? In case a carboy of it was cracked or injured on deck, how far would it be likely to spread over the deck before it could be thrown overboard?

(Question objected to.)

Ans. A carboy breaking in the hold, if placed in such a posi-
651 tion that its conten's would run over freight contiguous to it, it would become more or less damaged if not destroyed. If placed upon the floor of the hold it would act destructively upon the timbers. If upon the deck, a fracture or breakage would be detected by its peculiar odor and thrown overboard before it could do any serious damage; but if placed in an iron case, as mentioned, the larger portion, if not all of it, would be retained in the case; a mere loss of the carboy and its contents would follow.

(Answer objected to as irrelevant and not responsive to the question, and more the theory of a scientific man, when he is not present at the time of the accident.)

5. Int. What effect would oil of vitr*oi*l have with reference to causing or increasing fire? Can it or not be set on fire, and what is its tend*a*ncy to aid or put out fire?

(Question objected to.)

Ans. Oil of vitr*oi*l is not combustible; thrown upon matter in a state of ignition it would extinguish it as suddenly as water. I have seen a number of carboys burst and I have never known any combustion to follow the accident. Oil of vitr*oi*l mixed with coal-oil, benzine, naptha, lard oil, or alcoh*o*l, or whiskey, will not ignite it. Wood
652 placed in oil of vitr*oi*l is destroyed, both substances being destroyed.

(Answer objected to as not responsive to the question, and the witness his theories upon matters not asked for.)

6. Int. How is the wood destroyed?

(Question objected to.)

Ans. It is eaten up.

7. Int. Can the carrying of it on deck, properly stowed, in any way endanger, or effect the management of the boat other than other freight would?

(Question objected to.)

Ans. It cannot.

8. Int. State whether you are familiar with coal-oil, and all its products, to wit, benzine, benz*o*le, naptha, or gasoline? If so, how long have you been acquainted with their properties and qualities?

(Question objected to.)

Ans. I have made, handled, and sold thousands of gallons of those substances. I am thoroughly acquainted with their nature, qualities,
&c. My knowledge extends many years back in relation to them,
653 and more particularly for the last ten or twelve years, ever since their introduction as illuminators and other purposes.

9. Int. State what is the character of all those substances, as to their being or not being explosive burning fluids, or materials ignite by friction.

(Question objected to.)

Ans. They are not explosive per se. Their vapor mixed with the atmospheric air in certain proportions will, like hydrogen or carbur*a*tted hydrogen gases produce an explosive mixture. By friction none of them can be ignited. In the atmosphere this explosive mixture cannot be formed. It can only be produced where the vapor is confined. It is only explosive in vapor confined as I have stated but not while a fluid.

10. Int. Can you explode coal-oil or any of its products while in a fluid state by thrusting a lighted brand down into a barrel of it?

(Question objected to.)

Ans. You cannot explode them when in such a condition.

11. Int. Can they be exploded if broken open on the deck of a boat?

Ans. They cannot.

654 Cross-examination by Mr. Douglass:

1. X-int. Were you present at the time of the accident between the America and the United States?

Ans. I was not.

2. X-int. I understand, then, that you are only a scientific theorist, and know nothing about the facts in this case?

Ans. I don't consider the two interrogatories in that light. They are assertions and not interrogatories. What I have asserted is not from theoretical knowledge but from practical knowledge. So far as relates to the accident I know nothing but w'at I have learned from the papers and otherwise.

3. X-int. How did you come here, without a subpœna and at the request?

Ans. I came here at Mr. Lincoln's request.

4. X-int. Then you left your business and came here at Mr. Lincoln's request?

Ans. That is my answer.

655 5. X-int. As a chemist do you know anything about aurora oil? If so, what is it?

(Question objected to.)

Ans. I have met aurora oil; I have examined it; it is *n*ainly benzine. It is benzine, or a light distilled from p*a*troleum.

6. Int. At what temperature does naptha pass off?

Ans. Any temperature; it is exceedingly volatile.

7. X-int. At what temperature does gasoline pass off? I*t* there an*d* difference between gasoline and naptha as to the temperature it passes off?

Ans. At the same as naptha; there is little if any difference between them except specific gravity.

8. X-int. Is there any difference between benzine and benz*a*le in specific gravity? if so, state at what temperature each passes over in distillation.

Ans. There is a wide difference in benzole and benzine; there
656 is a wide difference in them in gravity and everything else; they both pass over below the boiling point of water; benz*a*le is a raw substance and is only obtained by the distillation of coal-tar and not p*a*troleum; it is not general in commerce; benzine, so called, is one of the lighter products of p*a*troleum; so far as they are combustible and volatile they are alike.

The further taking of these depositions is adjourned, by consent of the counsel for the parties until to-morrow, March 9, 1871, to be then resumed at the same place and between the same hours.

R. S. FULTON,
Notary Public, Hamilton County, Ohio.

OFFICE LINCOLN, SMITH, WARNOCK & STEPHENS,
Cin'i, O., March 9, 1871.

The further taking of these depositions is resumed to-day pursuant to the adjournment of yesterday above noted.

R. S. FULTON,
Notary Public, Hamilton Co., Ohio.

657 Cross-examination of Prof. Wayne resumed by Mr. Douglass:

9. X-int. As a chemist, what is aurora oil?

Ans. Aurora oil is a hryd'ocarbon obtained from patroleum, commercially known as benzine; it is specifically lighter than water, exceedingly volatile and inflam'able at any temperature.

Re-examination by Mr. Lincoln:

1. Re. Which has the greatest specific gravity, water or coal-oil? (Question objected to.)

Ans. Water has a greater specific gravity than coal-oil; in other words coal-oil will float upon it.

2. Re. Suppose a considerable quantity of it should get released upon the decks and take fire upon the decks of a boat, and while on fire run into the river, would it or not burn on the surface of the water?

Ans. It would burn on the surface of the water.

658 3. Int. What is the specific gravity of oil of vitroil as compared with water?

Ans. The specific gravity of oil of vitroil is nearly double that of water; take water 1,000, oil of vitroil would be 1,860.

4. Int. Suppose some carboys of it should get broken and run into the river, even a dozen of them, when the river is at a good stage and in a good current, what would be the effect upon the oil of vitroil upon its striking the water, aside from its sinking in the water?

(Question objected to.)

Ans. Should it be poured or run into the water, the volume of water compared with that of the vitroil, would be so great that the oil of vitroil would be mixed with the water, and all trace of it in a manner lost. It would be the same if the vessel sunk with the oil of vitroil disingaged on deck.

Recross-examination by Mr. Douglass:

659 1. Re-x. What do you mean by coal-oil? Do you mean patroleum in its crude state, benzine, benzale, napth', rock-oil, kerosine, or what? Or what illuminating oil, refined or not refined?

Ans. By the term coal-oil, I mean those hydrocarbon oils, obtained either from coal or patroleum, and commercially known and sold as coal-oil.

2. Re-x. What is the gravity of illuminating oils permitted to sold under law in Cincinnati?

Ans. The gravity has nothing to do with testing coal oils. The legal standard is the temperature, and not that of specific gravity, by the mixture of light and heavy oils, consequently the test of s. g. is not taken into consideration.

3. Re-x. Then, I understand you, by doctoring you can make naptha sell at the same specific gravity as coal-oil, as Government standard of fluids?

Ans. Yes, sir; by mixing a light and a heavy oil together it can be made of any specific gravity.

660 4. Re-x. In your firm do you do it?

Ans. We do not; it is mainly done by the manufacturers.

5. Re-x. As a chemist, do you say that coal-oil distilled under law for household purposes, can be mixed with naptha and be safe under the law?

Ans. I have already stated in a'swer to a former question that neither benzine, benzole, naptha, nor coal-oil are explosive per se. But when mixed with atmospheric air in any confined space, a lamp for instance, such explosive mixture is likely to occur. Hence it is dangerous to use

any oil mixed with naptha, for reasons above-mentioned, and to avoid this mixture and prevent its sale, there are State laws and a general United States law passed to prevent it. Kerosene is merely a trade name for coal-oil; it is coal-oil.

6. Re-x. As a chemist, do you say saltpetre will explode?

Ans. I believe only in contact with carbon. Prof. Huse demonstrated that fact in Philadelphia, after the terrible fire in that city 23
661 years ago. I have often fused and ignited it myself without an explosion.

7. Re-x. Then as a chemist, you never knew saltpetre to explode, until you knew it happened. Is that not the way, by indication, to find out anything in this world?

Ans. I have never known it to explode in my hands. By experience, not always by indication we arrive at facts.

8. Re-x. Then because it never exploded with you, you don't believe it exploded in Philidelphia or any other place?

Ans. I do not, unless by and through the assistance of some other substance.

9. Re x. Then, unless you saw the fact of aurora oil, vitroil, and cotton come together with furnaces close by, in a collision, you wouldn't believe that the coal-oil and cotton caught fire, unless you saw it and saw the intervening carbon?

Ans. I see no connection in the question whatever with the questions and answers already given. I will answer it, however, as follows: The coal-oil, cotton, and vitroil might be mixed together and no com-
662 bustion follow. But if the vapor of the coal oil should come in contact with the furnaces, assuming that there was fire in it, the vapor would be ignited and a probable combustion of the oil and cotton follow.

E. S. WAYNE.

STATE OF OHIO,
Hamilton County, ss:

I, R. S. Fulton, a notary public within and for the above county and State, do hereby certify that Edward S. Wayne and T. D. Lincoln, the above-named deponents, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth in relation to the said cause now pending in the common pleas court of Switzerland County, in the State of Indiana, wherein Charles Alling, administrator of Otis B. Sappington, deceased, is plaintiff and Thomas Sherlock et al. are defendants; that the said deposit's above appearing were all reduced to writing by me in the presence of the said witnesses respectively, and that
663 the said deponents subscribed their respective depositions in my presence after the same had been carefully read over to them by me; that the adverse party was present by his counsel, J. G. Douglass, at the taking of the said depositions, that all the said depositions were taken at the law-office of Lincoln, Smith, Warnock and Stephens, in the city of Cincinnati, county of Hamilton, State of Ohio, on the said 8th & 9th days of March, 1871, and between the hours of 8 o'clock a. m. and 6 o'clock p. m. on the said days, agreeably in all respects to the annexed notice.

In testimony whereof witness my hand an' notarial seal, given at Cincinnati this 10th day of March, A. D. 1871.

[L. S.] R. S. FULTON,
Notary Public, Hamilton County, Ohio.

Defendants also offered in evidence and read the depositions of Henry Christopher, James W. Gasler, John L. Crane, John W. Oyler, & William Smith, taken at Louisville on or about Nov. 9th, 1870.

664 Depositions of Henry Christopher, James W. Gosler, John L. Crane, John W. Oylar, and William Smith, witnesses produced and sworn before me, a notary public within and for the county of Jefferson, in the State of Kentucky, at the law-office of Missrs. Caldwell & Caldwell, in the city of Louisville, (near the court-house,) Jefferson County, State of Kentucky, which depositions of the above-named witnesses were taken in the following order, to wit: The depositions of Henry Christopher, James W. Gasler, and John L. Crane, on the 29th of November, A. D. 1870; the deposition of John W. Oyler, taken on the 30th of November, 1870, and the deposition of William Smith, on the 1st day of December, 1870, all taken pursuant to the enclosed notice, in a certain action pending in the common pleas court of Jefferson County, Indiana, wherein Charles Alling, admr. of Otis B. Sappington, is plaintiff and Thomas Sherlock et al. are defendants.

Deposition of Henry Christopher.

The said HENRY CHRISTOPHER being duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows, viz:

665 Question by defts.' atty.:

1. Int. State your name, age, and place of residence, and what experience you have had in piloting steamboats, and where.

Ans. My name is Henry Christopher; age, 62 years; residence, Louville, Kentucky. Have followed piloting on steamboats from Louisville to New Orleans & St. Louis over 31 years.

2d. What sort of night' are those which pilots call "gray nights" on the river with respect to effecting their judgment as to distances?

Ans. A gray night is a thick night, with heavy atmosphere, misty, and ver' deceptive in seeing lights. Pilots on such nights cannot tell the distance a light or other object is off *on such nights* with any accuracy, nor near so accurate as they can when it is not a gray night.

3d. How would such a night be if in addition to being a gray night it was a drizzly and windy night?

Ans. It would increase the darkness, and make it that much worse for judging distances.

4. What has been the usage among pilots with reference to which boat signals first? And state, if you can, under what circum-
666 stances, if any, a down-stream pilot signals first.

Ans. It is customary for the ascending boat to signal first, but it is usual when the ascending boat fails to signal at the proper time for the descending boat to signal. Such has been my habit, and I have seen others do so. The reason why this is done is that the ascending boat might whistle and the descending boat not hear it. I have often seen the steam from whistle of the boat and not hear the whistle, and answered the same whistle on account of seeing the steam. This was by daylight. After night we could not have seen the steam, of course.

5th. Suppose two boats are about to meet, and the down-stream pilot has not heard any signal from the up-stream boat until in his judgment they are so near that the signal ought to be given, what would be usual for the down-st'eam pilot to do in that case?

Ans. It is usual for him to give the signal.

6th. How long have you been acquainted with Captain David Whitten and Capt. R. M. Wade as steamboatmen?

Ans. About thirty years.

667 7th. What, if you know, is their reputation among steamboatmen for prudence, skill, and care in their business?

Ans. Their reputation has been very good; none better that I know of.

8th. Answer the same question with reference to Jacob Remelein and N. B. Jenkins as pilots, if you know.

Ans. Mr. Remelein I have known about 25 years, and have always looked upon him a first-class pilot; a prudent and careful man; am not acquainted with Mr. Jenkins except from reputation; have always heard him spoken of as a first-class pilot.

Cross-examination by plff's atty.:

1st. Where are you employed now?

Ans. Am living in the city now; am not employed on the river.

2d. How long since you were employed on the river? In what line were you last employed?

Ans. Ten years next April, and was running from here to New Orleans then, on the steamer Magenta.

3d. Were you ever employed in any line between here and Cincinnati?

668 Ans. No, sir.

4th. State whether you are related to any of the parties to this suit, or in any manner interested in this suit.

Ans. Not in any way whatever.

5. You state that it is difficult to judge of distances on gray nights, and still more difficult of misty and drizzling nights. Is it not good piloting on nights of this description to slacken the speed of the boat when meeting another boat?

Ans. If the night is too dark, it is good piloting to slacken the speed of the boat; but they are to be judges of that.

6th. Did you know the United States & America before they burned in 1868?

Ans. I had seen them.

7. Suppose a gray night, when it is windy and drizzling, snow and rain, so that it is difficult for a pilot to judge whethe' an approaching boat is six hundred yards or a mile distant, would it be careful and prudent in a pilot navigating a boat of the size of the United States to steam down stream at the rate of 15 or 17 miles an hour, approaching another steamer?

Ans. If he believed she was a mile off it would be prudent for
669 him to go on; but if he believed her to be 600 y'ds off, it would be prudent for him to go slower.

8th. But I understand you to say that it is difficult on such a night to judge accurately distances. I am speaking of a night when a pilot cannot form any certain judgment of the distance. Would it be prudent and careful, under the circumstances described in the preceding question, to approach another steamer at that rate of speed without being absolutely certain of the distance?

Ans. That word "absolutely certain" is hard to answer; for no man is absolutely certain of anything in this world.

9th. Would it be prudent and careful to go at that rate of speed if the circumstances were such as to create a doubt as to the distance?

Ans. I think if the pilot was in doubt, and there was danger, it would be prudent for him to slacken the speed; otherwise he should go on.

10. Do I understand you to say that a pilot always can be satisfied of the distance of an approaching steamer to justify him in navigating a steamboat at that rate of speed on such a night as I have described?

Ans. A pilot, I think, is always satisfied of his own ability to
670 determine whether to go fast or slow, and that he is capable of judging. I don't know that a pilot can always be satisfied of the facts stated in the question. He may be a little in doubts.

11th. Then, if he is in doubts, would it not be his duty to be more cautious, and go slow?

Ans. I think it would.

12. You say in your direct examination it is customary for the ascending boat to whistle first. Is not this custom founded upon the rules of the supervising inspectors?

Ans. It is.

13. Suppose two steamers like the America and the United States are approaching each other on a gray, drizzly night, on the Ohio River, where it is 500 or 600 yards wide, & the river straight, & where no obstructions to navigation exist at the time; and suppose, further, that the pilots of the two boats see each other's signal-lights when the boats are from 2 to 3 miles apart, would there be anything in the circumstances requiring the pilot of the descending boat to blow the first signal when the two boats were about a mile apart; and, if yea, state what would require them to do so?

671 (Objected to by defts.' atty. because it assumes a state of facts which did not exist in the case, and leaves out many facts which did exist.—N. R. WILSON, *N. P. J. C.*)

Ans. I think it is not necessary to signal at that distance; it is further than the law requires.

14. Would it be proper for the pilot of the descending boat to signal at the distance of 1,000 yards under those circumstances?

Ans. I think it would.

15. Why?

Ans. Because he wants to be satisfied which way they are going.

16. Is not 1,000 yards more than the law requires?

Ans. I don't know whether it is or not. I don't know whether there is any law for the descending boat to blow, except that it may signal if the ascending boat does not.

17. When is the pilot of the descending boat to know that the ascending boat has failed to signal? In other words, how near must he let the ascending boat approach before he considers her pilot in default of signaling?

672 (Objected to by defts. because it assumes a default of signaling by the up-st'eam pilot, when in fact he may have signaled and his signal not have been heard.—N. R. WILSON, *N. P. J. C.*)

Ans. He knows by not hearing the whistle, I reckon. I think 800 or 1,000 yards would be near enough for the descending boat to whistle under the circumstances.

18. Are you acquainted with rule 10, governing pilots, prescribed by the supervising inspectors?

Ans. I don't remember it by number; I was acquainted with the rules but not by numbers. Having looked at printed rules handed me by counsel for both parties, I am acquainted with them.

20. Suppose on a night such as has been described to you, a pilot on a boat such as the United States, was descending the river at the rate of

speed of 15 to 17 miles an hour, would meet an ascending steamer which would approach him to within 800 yards, and the pilot of the descending steamer was to hear no signal from the ascending steamer,
673 would not the rule refer'ed to require him to stop and slacken the speed of his boat and to blow the short, quick signal required by rule 10?

Ans. I think not. Rule 10 refers only to when there is a misunderstanding of signals.

21. Does not rule 2 apply to such cases?

Ans. Rule 2 says: "Should steamers be likely to pass near each other, and the signals should not be made and answered by the time such boats shall have arrived at the distance of 800 yards from each other, the engines of both boats shall be stopped; or should the signal be given and not properly understood from any cause whatever, both boats shall be backed until their headway shall be fully checked and the engines sh*h*all not be again started ahead until the proper signals are made, answered, and understood." I think the descending boat at the distance of 800 yds. should blow her whistle, and if she didn't get an answer immediately, she should stop, and, if thought necessary, should back.

22. Suppose the descending boat on such a night and under such circumstances described were to signal the descending boat when she was a mile off, and were to hear no signal in answer, would it be prudent and careful for him to steam up steam at the rate of 12 miles
674 an hour with a boat as large as the America was, until the two boats were from 500 to 600 yards apart, having taken it for granted that his signal was answered from the way the down-st'eam boat was holding?

Ans. If he saw the boat was steering in a different direction from the one he was going it would not be necessary to stop, but if he saw the boats would pass near each other it would be his duty to stop.

23. State what you call a different direction and what you mean by passing near each other for boats of that size.

Ans. If I see a boat steering in a direction that she will not come within 500 or 600 yards or 300 or 400 yards of me I consider that a different direction; but if she was steering so that I thought she would come within 50 or 100 yards of me I would not consider it a different direction.

24. Would it in your judgment be careful and prudent for the pilot of such a boat as the America was, navigating the Ohio River, up st'eam on a gray, drizzly, windy night, at the rate of 12 miles an hour, to take it for granted that his signal had been answered by the descending boat from the fact that the descending boat appeared to be holding
675 about 100 yards further out in the channel than he was, and thus to approach the descending boat to within 600 yards without signaling again, slacking the speed of his boat, or having any signal from the approaching boat?

(Objected to by plff. atty. because it assumes a state of facts that did not exist in this case and leaves out many facts which did exist.—N. R. WILSON, *N. P. J. C., Ky.*)

Ans. I think he ought to have signal*l*ed again if he got no answer. He ought not to take it for granted that the other boat had signaled unless he heard it.

25. Then it would not be prudent and careful to do so?

Ans. No, sir.

26. How many instances do you remember of seeing the steam of the whistle & not hearing the sound?

Ans. I couldn't tell, but I reckon 100 times.

27. Do you know what was the cause of it?

Ans. The wind blowing in a different direction.

28. State whether a slight or strong wind would produce that effect?

Ans. A pretty st'ong wind.

29. Suppose, when the collision between the United States and
676 America took place, the America was going up stream, bearing a little to the left of the channel, that is, from a straight line, and that she struck the United States (coming down stream) on the larboard side 15 inches from her stem, and that she cut diagonally across her bow, and back through the guards and hull some 18 feet, and turned her around, her stern swinging towards the Kentucky shore, and her bow turned up st'eam towards the Indiana shore, which boat, in your judgment, was quartering across the river at the time of the collision?

Ans. If the channel was straight there with the shore the America, of course, was quartering across, and the other boat may have been also quartering across a little.

30. Now if the States, at the time of the collision, had been coming straight down the river and the America quartering towards her, would not the force of the collision, occur'ing as I have described in the preceeding questions as to the point , have turned the bow of the America down stream, her stern swing towards the Kentucky shore?

Ans. The boats coming together, quartering in that way, they
677 would both give, the bows of both swinging out and their sterns coming together, the stern of the America would have swung up st'eam and the stern of the other down st'eam.

31. Suppose that, when the collision took place, the America's stern did not swing up st'eam, and that she remained in the same direction she was in just before the collision, and that the stern of the States swung out towards the Ky. shore and down st'eam, and her bow turned toward the Indiana shore and up st'eam, can you tell, from this statement, at what angle the two boats were approaching each other just before the collision?

Ans. No, sir; I can't tell.

Re-examination by deft's. atty.:

1st. Name some of the largest boats on which you have piloted, and state how they correspond in size, class, and power with the United States and America.

Ans. The Niagara, the John Simonds, the Magenta, the Eclip'e, all of which were larger than the United States and the America.

2d. You have been asked, on the cross examination, whether
678 the usage of the up-stream boat giving the signal first on meeting another boat was not founded upon the printed rules of the supervising inspectors. Now please state whether or not that usage was in existence prior to the adoption of the rules, and even why they used bells.

Ans. I don't recollect there was any particular rules about which boat should ring first, but there was a rule adopted for ringing the bells for the larboard and starboard side.

3d. Since you have ceased piloting as a proffession have you or not often traveled on steamboats?

Ans. No, sir; I have never traveled on any but a ferry-boat since.

4. You have been asked several questions by plff.'s atty. upon various suppositions as to what ought to have been done by the pilots of the United States and America; please state *you* ought to be the best judge of what should have been done under those circumstances, as to the handling of the boats and whose judgment must be relied on in such matters.

Ans. I think the pilots of the boats are the only persons who could be relied on.

679 5. How many years did you continue piloting after the act of Congress for the adoption of rules governing pilots?

Ans. Nine years.

HENRY CHRISTOPHER.

Deposition of James W. Gasler.

And the said JAMES W. GASLER, second witness, being duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows:

1st question by defts.' atty. State your name, age, and place of residence, and what experience you have had in piloting steamboats, and where and the class of boats.

Ans. My name is James W. Gasler; age, 55 years; residence, Anchorage, Kentucky. I was a pilot and captain of steamboats for 25 years between Louisville & New Orleans, & St. Louis & New Orleans, always on large boats.

2d. Are you familiar with the pilots' rules, adopted by the supervising inspectors, and have you been familiar with them since the act of Congress concerning them was passed, in 1852?

680 Ans. I am familiar with the rules.

Ques. 3. Look at rule 2 of the rules now shown you, adopted Oct. 17, 1865, and state what construction was put upon that rule by good pilots with reference to the down-stream pilot under certain circumstances sounding his whistle when meeting another boat, before the up-stream boat has signalled, or before he has heard a signal from her. State what the construction was and is, if any was and is with reference to that.

Ans. I don't believe any pilot can tell in the night-time when another boat is at the distance of 800 yards off, but I do believe that somethin' indicates to a pilot when a boat is coming within a dangerous proximity, and then I would stop whether I was on an up or on a down-stream boat, or do that which I thought most likely to avoid a collision. Said rule meand, and the construction put upon it by pilots is, that either boat may signal first.

4th. Under what circumstances might a down-st'eam pilot
681 sound his whistle first, and under what circumstances have they done so as a matter of fact and practice?

Ans. When he though' he was sufficiently near to come to an understanding as to which side he should take, & when he thought it was time to have heard the up-st'eam boat-whistle, if he hadn't heard it, he would blow his whistle.

5th. State whether you have personally done that, and you know of others having done so under the circumstances.

Ans. I have done it often, and have known others to do it. I presume every pilot on the river has done it.

6th. What means has a pilot of judging when a boat is eight hundred yards off except in the exercise of his judgment?

Ans. I know of no other.

7th. Would or no many good pilots differe widely in their estimate of distances on the river, even in day-time?

Ans. I think they would.

682 8th. Suppose two boats were meeting after night, in a gray, somewhat cloudy, somewhat drizzly, *drizzly* night, how would that effect the judgment of good pilots as to certainty in judging distances?

Ans. I think they might easily be mistaken, and I think it impossible to tell accurately the distance. Lights are very deceptive in such nights.

9th. To what extent migh' even good pilots err or differ as to distance on such nights?

Ans. I think a boat migh' be within 300 or 400 yards when you would think her a half mile off.

10th. Might she or not be a mile off when you would sometimes imagine her to be on'-half that distance?

Ans. I think such discrepancy might occur.

683 11th. Suppose the down-stream pilot and the up-stream pilot should commence signalling with their whistles at the same instant, they having differed in judgment as to the precise distance, what would be the effect of each hearing the other's whistle under those circumstances?

Ans. If each blew one whistle at the same time neither would hear the other's. It would be the same case if each blew twice. But if one blew one whistle and the other sounded two, he would hear the last whistle, and the other pilot would not hear any.

12th. Have you in your experience ever known of a whistle being blown by one pilot and not heard by the pilot on the other boat?

Ans. I have frequently seen the steam of whistles on the other boat without hearing the sound.

13th. How long have you known Captain Whitten and Captain R. M. Wade? and if you know what their reputation is for skill, care, and prudence as steamboat men, state what it is.

684 Ans. Have known them for 25 years. They have been regarded as prudent and skillful men, one a splendid pilot, and the other a splendid engineer.

14th. Answer the same question with reference to N. B. Jenkins and Jacob Remelein?

Ans. I knew them from reputation only; they stand high as pilots.

Cross-examination by plff's atty.:

1st. State where you are employed now, and on what boats, if any, and also whether you have any interest in this action, and whether you are related to any of the parti's to it.

Ans. I am a pork-packer in this city, of the firm Hughes, Gaslee & Co., and I do not and never did own a dollar's worth of stock in the Mail Company. I have not steambo'ted since the war com-

685 menced; have no interest in the action, and am not related to any of the parties.

2d. Does not the first rule for the government of pilots require the ascending boat to signal first, and does it not limit the right of the descending boat to signal first to ease where the danger of navigation, narrowness of the channel, or other cause which would be open to the observation of the pilots of both boats?

Ans. The rule says the up-stream boat shall give the first signal, but I know of nothing in the pilot rules that would prevent a down-stream boat from giving a signal if she thought there was danger of a collision.

I think there is a period in the history of every collision where these rules would not govern pilots, and when the rules would not cover the case. I don't know, however, that this will have anything to do with the case. I think, where boats are near together, the pilots must be governed by their judgment.

3d. Would the pilot of a down-stream boat be justified in sig-
686 nalling first when the' was no apparent danger of a collision and before the up-stream boat was in default in signalling, and would not his signal in an instance of that kind make it likely that his signal would take place at the precise moment the up-stream boat was signalling?

Ans. I think he would be justified in signalling at any time. I think the down-stream boat has the right of way under those rules. As I have said before, the down-stream boat may signal when she thinks she is near enought to come to an understanding as to which side she will take even if she has not heard a signal from the up-stream boat. I do not think it would endanger the safety of either boat by so signalling.

4th. In answer to the elevent' ques., direct examination, you state that if each boat blew one whistle at the same time, neither would hear the other, and you also state on cross-examination that the up-boat must signal first according to the rule. Now, if the down-boat
687 signals first, before or at the time the up-boat get' within the proper signalling distance, I will ask you if there is not great probability of the signals drowning each other, particularly if the pilot of the up-boat follows the rule, and is not expecting the down-stream boat to signal first?

Ans. If they blew together, it would certainly drown the sound; but if the down-stream boat, as I said before, was coming within what the pilot considered a dangerous proximity, he ought to sound his whistle, though he has not hear' the up-stream boat whistle.

5th. Is there not danger in such case of blowing the whistles together?

Ans. Yes, sir; they might do so.

6th. Does not that construction of the rule, which you gave, really nullify the rule?

Ans. I think not. The rule always works well when there is no mis-
understanding; but when the whistles have been misunderstood
688 in the night-time, and the boats are near together, the pilot's judgment is better than the rule.

7th. You state in answer to the 8th & 9th questions, on the direct examination, that you think it is impossible to tell accurately the distance in a gray, cloudy, drizzly night; that lights are very deceptive on such nights, and that a boat might be 300 or 400 yards off, when you thought her a half a mile off. Now, on a night of this description, would it, in your judgment, be careful and prudent for the pilot of a down-stream boat to approach an ascending boat at the rate of 15 to 17 miles an hour, with a boat the size of the United States?

(Objected to by defts' atty. because it assumes facts that do not exist, and is indefinite as to distance and in other respects.—N. R. WILSON, *N. P. J. C.*)

Ans. I don't think it would be prudent for him to come nearer unless
he was certain, in his judgment, which way she was pointing. I
689 don't think the rate of speed would make any difference unless she was likely to cross his path.

8th. But on such a nigh', I understand you to say, it is impossible to judge how far off a boat is. Now, would it not be more prudent to

slacken the speed of the boat than depend upon an uncertain judgment as to the distance of the approaching boat?

Ans. I say it is impossible to tell how far off a boat is. I did not say it was impossible to judge. It is safer to go slow when you see a boat approaching; it is also safe to stop, and safer still to land, but I don't know of boats doing it.

9th. Suppose the America, on the night of the collision, saw the signal-lights of the United States when she was two or three miles off, and that the America signaled for side, when, in the judgment of the America, the United States was a mile off, and that he did not hear any signal in answer to his, but took it for granted that his signal had been answerd, from the fact that, in his judgment, the United
690 States was holding to pass him on his starboard about 100 yards to his right, and that he did not renew his signal until the boats were within 500 or 600 yards apart, and the night was a gray, drizzly night, was it, in your judgment, prudent and careful for the pilot of the America to act in such a manner?

(Objected to by defts.' atty. for assuming as facts things not in the case, and because it is not a cross-examination, and for other reasons.—N. R. WILSON, *N. P. J. C.*)

Ans. I don't think he ought to have let the States get within 500 or 600 yards of him without having some understanding about the signals. I think 100 yards a safe distance to pass a boat in the night-time.

Re-examination by defts.' atty.:

1st. Who are the best judges of how boats ought to be handled in cases of collision, or in danger of one, and whose judgment
691 must be depended upon in such cases?

Ans. The pilot at the wheel.

J. W. GASLEE.

And the said JOHN L. CRANE, third witness, being duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows:

Questions by defts.' atty.:

1st. State your name, age, and residence, and what experience you have had in piloting steamboats, and where; and state whether you are a pilot at the present time.

Ans. My name is John L. Crane; residence, Louisville, Ky.; age, over 60 years; have piloted all classes of steamboats from Louisville to New Orleans and Nashville for over 30 years; am a pilot—that is, I have been piloting this fall, and will be again so soon as the river rises and I procure a place.

692 2d. What connection have you ever had with the local inspector's office in Louisville, when, and for what length of time?

Ans. I was appointed inspector of hulls, I think, some time in 1864, the local board of Louisville, and served about three and one-half years.

3d. By whom were you appointed and under what law or authority did you act in such capacity?

Ans. I was appointed by Secretary Chase, and acted under the steamboat law 1852.

4th. Do you mean the same law under which rules and regulations for pilots were established?

Ans. Yes, sir; the same.

5th. You say you were inspector of hulls. How many others were in office with you?

Ans. One—an inspector of boilers. We were under a supervising inspector.

6th. State the nature and kind of duties you, in your official capacity, performed as inspector in connection with the other. What have you had to do with pilots and their duties; what class of cases have been brought before you for adjudication?

693

Ans. It was our duty to issue license to pilots, and in case of collision and violation of steamboat laws it was made our duty to investigate these matters, to acquit, suspend, or revoke the license, if the case required it.

7th. What had you officially to do, from time to time, with reference to construing the meaning of the pilot rules, and what with reference to advising or informing the pilot as to the practical meaning and their practical duties under the rules?

Ans. As inspector' I don't think we ever consulted about that. If a pilot violated the rules, we suspended his license, if the cause is sufficient—that is, a wilful violation.

8th. Look at rule 2d of pilot rules of Oct. 17, 1865, and state what you regard as a fair construction of it with reference to a down stream pilot blowing before the up-stream boat signalled. Under what circumstances, if any, would such a thing be proper or usual, if at all?

694

Ans. There are some circumstances under which I think it necessary that the down-stream boat should give the first signal. Sometimes when a boat is coming down the river and the night is very stormy, when she sees the lights of the boat coming up, it being difficult to tell the distances she is off, and also difficult to hear the sound of her whistles of a rainy night, I then think it safe for her to sound her whistle to let the pilot of the other boat know that there is a steamboat near.

9th. State whether it is usual for them to do so under such circumstances.

Ans. I believe all good pilots take that precaution.

10th. Now, suppose two boats were approaching each other on what is called a gray night—cloudy, and some drizzle and wind—and suppose the pilot of the down-stream boat should not have heard any whistle from the up-stream boat, and thought it time for the up-stream boat to blow, what should he do under those circumstances?

695

Ans. As soon as I thought my whistle could be heard I would blow, if I was on the down-stream boat.

11th. The rule 2d names 800 yards for the up-stream boat to blow first, and answer given. No', suppose no whistles pass between them until the down-stream pilot thought he was within the 800 yards, what would you saw then about his blowing first, and what is usual?

Ans. When I supposed I was within 800 yards, I would stop my engines and signal for the side I wanted to take.

12th. On a gray night, like the one alluded to in the question above, what do you say about its effect upon the judgment and estimate of pilots as to distance of their boats when approaching each other, and give your reasons?

Ans. Pilots are very liable to be much deceived on such nights as to distance. The shores show very badly, and that is the only means by which they can judge as to distance. Sometimes in a gray night the boat may be nearly on you when you think she is some distance off.

696 13th. State whether there is any difficulty in locating the other boat opposite any particular point on the shore on such a night?

Ans. If you can't see the mark on the shore very distinctly, you can't locate a boat very well.

14th. What, from your observation, can you say as to the possibility of one boat blowing a whistle which may not be heard by the other pilot; under what circumstances would that happen, if at all?

Ans. If you should be going up stream and the was was blowing on the direction you were going, it would be difficult to hear the whistel of the other boat, or vice versa; also if the whistles should blow simultaneously, the pilots would only hear their own whistles.

15th. When you say that you were never asked your opinion in the construction of those rules, do you mean you have never given your opinion in your official capacity, or do you mean that it has not been asked of you privately?

697 Ans. I never gave my opinion in an official capacity, but as a pilot I have often given it.

16th. What opinion, then, did you give other pilots when asked for it, with reference to rule No. 2, about the down-stream boat blowing first; I mean even while you were an officer?

(Objected to by plff.' atty.)

Ans. I don't know that I ever gave my opinion as an officer. I did while a pilot, often. My opinion was that the up-bound boat was too slow in giving the signal; that it was necessary for safety for the down-stream boat to give it, so as to let the pilot of the other boat know that there was a steamboat there.

17th. How would it be if the up-stream boat had whistled, and it was not heard by the down-stream boat?

Ans. It would be the same thing, or if he didn't know whether she had signalled or not.

18th. An' in such cases as this, whose judgment must be depended on, and who must decide when to blow?

698 Ans. The pilot on watch.

19th. Do you Captain Wade and Captain Whitten, and pilots, Remelein and Jenkins, and, if yea, do you know their reputation respectively, as capations and pilots? If yea, state what it is for skill, prudence, and care.

Ans. I have known Captains Whitten and Wade, and pilot Remelein for over twenty years, and Jenkins perhaps ten years. The' all have the reputation of skilfull and prudent boatmen: Captains Whitten and Wade as commanders, the other two as pilots.

Cross-examination by plff.'s atty.:

1st. Are you any way interested in the Mail-Line Company, or in any way related to any of the stockholders?

Ans. No, sir.

2d. You state, in answer to question 8th, direct examination, that there are some circumstances under which you think it necessary

699 that the down-stream boat should give the first signal. Sometimes when a boat is comind down the river and the night being very stormy, it being difficult to tell the distance a boat coming up is off, and also difficult to hear the sound of her whistle, you think it safe to sound her whistle first, to let the pilot of the other boat know that there is a steamboat near. I will ask you if, under such circumstances, a careful and prudent pilot would not slacken the speed of his steam-

boat, supposing to steamboat to have been going at the rate of 15 to 17 miles an hour?

Ans. If I hadn't got a satisfactory answer to the signal, and the pos tion of the other boat didn't suit me, I would ring my bell to go slow.

3rd. Supposing the nights were of such a character that you could form no satisfactory judgment of the distance and position of the other boat, would you not slacken you' speed in addition to blowing first?

Ans. If I thought the other boat was within too close proximity to me for safety, I would do so.

4th. Suppose you couldn't tell how close the other boat was
700 under the circumtances I have stated, then what?

Ans. I would check my speed and sound my whistle again.

5th. Do I understand you to say that under the pilot rules refer'ed to, the pilot of a descending boat may signal first whenever he thinks it necessary without such a state of surrounding circumstances as would cause the pilot of the ascending boat to expect him to signal first?

Ans. I don't say that, under the pilot rules as laid down, but I say it as the usage of pilots when they consider it unsafe to proceed further without sounding the whistle.

6th. Does not rule 1st require the pilot of the ascending boat to signal first?

Ans. Yes.

7th. Is not the custom of which you speak liable to produce a mis understanding of signals, and how is the ascending boat to know that the pilot of the descending boat will choose to signal first, and is it not likely that the whistles of the two boats will occur simultaneously and drown each other?

701 Ans. I' might happen and does happen that they blow simultaneously, but not frequently; but either of them has a right to signal again if there is any misunderstanding.

8th. You say either has a right to signal again if there is a misunderstanding; how is it when the down-boat is going 17 miles an hour and the up-boat 12 miles, for time for signalling again?

Ans. If they think they are too close together, they had better stop and signal.

9th. Suppose that the up-boat, of the size the America was, on a gray, drizzly night, saw the United States when she was 2½ or 3 miles off, and that when in the judgment of the pilot of the up-boat the two boats were about a mile apart the pilot of the up-boat signalled for side, and didn't hear any answer to his signal, but went on without slackening his speed, and took it for granted that the down-boat had answered his signal, and he had not heard it from the fact that the down-boat appeared to be holding about 100 yards to his starboard side, and
702 the pilot of the up-boat did not signal again until the two boats were from 500 to 600 yards apart, was such conduct of the pilot of the up-boat, in your judgment, careful and prudent?

Ans. I think when he supposed the other boat to be half a mile or more from him, it would have been prudent for him to have stopped his boat and given another signal.

10th. Would it not be a violation of rule 2d not to have stopped his boat and signalled again?

(Same objected to as last one.)

Ans. Yes, it would be; that is, at the distance of 800 yards.

11th. How long does it generally take to give and receive an answer to a signal?

Ans. Not more than a few seconds to give a signal, and it is necessary

for the sound to die away before it is answered; I suppose in the neighborhood of two minutes.

12th. How long does it take usually to bring a boat, the size that the United States was, from going at the speed of from 15 to
703 17 miles an hour to a full stop when going down stream?

Ans. I can't state how long, but it takes several minutes.

13th. About how many revolutions of her wheels backward?

Ans. In my experience of piloting, I never paid any attention to the number of revolutions necessary to back a boat. Engineers are the best judges of that.

Re-examination by defts.' atty.

1st. In these supposed cases that have been put to you, who are most competent to decide what ought to be done under each case, and can any general rule be laid down to apply to all cases, in your opinion?

Ans. The pilots on watch are the most competent judges. There is no rule that I know of that will work as well in cases of danger as pilots acting, as they have been sworn to do, according to the best of their skill and judgment. Under the license up to the last six months,
704 pilots were sworn to act according to their best skill and judgment.

JOHN L. CRANE.

The further taking of these depositions in this cause is now adjourned until to-morrow, November 30th, 1870, between the same hou's and at the same place' name' in the notice hereto attached.

N. R. WILSON.
Notary Public, Jefferson County, Kentucky.

Deposition of John W. Oyler.

NOVEMBER 30TH, 1870.—The taking of depositions in this cause is now resumed pursuant to adjournment, and the said JOHN W. OYLER, (4th witness,) being sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows, viz:

705 Questions by defts.' atty.:

1st. State your name, age, residence, and occupation, how long you have been so engaged, and on what rivers and what class of boats, if any.

Ans. My name is John W. Oyler; age, 30 years; residence, Louisville, Kentucky; occupation, pilot for the last nine years, mostly from Louisville to Cincinnati, and some on the Kentucky River, and have piloted on all classes of boats, large and small.

2nd. If you know Jacob Remelein and N. B. Jenkins, as pilots, state how long you have known them; and if you know their reputation as pilots for care, skill, and prudence, state what it is; and if you have run on the river piloting or steering for them or either of them, how long with each?

Ans. Have known them as pilots for 15 years. Have known Remelein longer. I don't think there are more careful men running the river than they are; that is their reputation among all the pilots that
706 know them. I first run on the river with Remelein to learn the river, and was with him 1½ or 2 years, and about the same length of time with Jenkins, learning piloting under each, and since that time we have been pilots together.

3rd. Have you ever run on the mail-boats between Cincinnati and Louisville as pilot; if so, how long?

Ans. I have been running of' and on, on those boats, for the last eight years, but not permanently so employed. I would take the place of the pilots when they would want to stop off for a few weeks.

4th. Are you acquainted with the pilot-rules of October, 1865?

Ans. I am.

5th. Look at the rules now shown you with reference to which boat shall signal first when two boats are meeting, and state what the construction and usage of pilots is under those rules with reference
707 to the down-stream boat signalling first under certain circumstances, and state under what circumstances pilots do sometimes signal first in going down stream, if any, and if in doing so it is a substantial compliance with the rules, in the opinion of pilots.

Ans. I have often signalled first, when on the down-stream boat, when approaching an ascending boat, and did so about one month ago, and thought it my duty to do so. It is sometimes a necessity, and almost a duty, for the down-stream boat to signal first. This becomes necessary because pilots are deceived in the distance the two boats are apart. The down-stream pilot sometimes thinks he knows he is closer than the up-stream pilot does, and in such cases he signals first.

6th. What kind of a night is a gray night, so called, and there is a slight drizzle of snow and rain, and windy, yet a night safe enough to run; what sort of a night is that as to judging of distances by pilots?

Ans. Gray night' are nights when river, shores, and hills look
708 alike, and *and* all seem to be on a level; and on such nights pilots are often deceived in the distance to any object.

7th. How much will they differ in judgment sometimes in gray nights?

Ans. A boat or any object may appear a half mile off, when in reality it may not be over two hundred yards off. Everything has a dimness of sight.

8th. Suppose a gray night such as I have described, when a pilot can see the shores and landmarks so as to run safely as usual; even then what effect has such a night upon the estimation of distances?

Ans. Then a pilot may be deceived, but not so much—he is not so apt to be. Objects and lights are clearer, and the lights show much plainer.

9th. Even in such a night as the last may or not a good pilot be deceived as to the difference between the distance of a half a mile and a mile, or between a mile and one and a half miles?

709 Ans. Yes, sir; good pilots are often deceived that much on such nights.

10th. What do you know from your experience and observation as to whistles being sometimes blown and not heard by the other boat approaching?

Ans. I have often blown my whistle on the up-stream boat, when the down-stream boat would commence blowing at the same time. I could not then hear his whistle, but it was daylight, and I could see the steam from his whistle.

11th. Can you or not say whether such an occurrance sometimes takes place on the river among pilots besides yourself?

Ans. Yes, sir. It is almost a common occurrance.

12th. If such a case should take place in a gray nigh' would either boat know whether the other had sounded or not?

Ans. No, sir; neither would know it.

13th. Have you any personal knowledge of the circumstances of the

collision between the America and United States? Were you running on the river at the time?

710 Ans. None; only what I have heard. I was not on the river at the time.

Cross-examination by plff.' atty.:

1st. Are you in the employ of the Mail-Boat Company now; if not, in what employment are you?

Ans. I am not in any employment now.

2d. Do you understand the pilot-rules to authorize the pilot of the descending boat to signal first at his pleasure?

Ans. He don't signal at his pleasure. He only signals when he thinks it his duty to do so. Said rules do not authorize the pilot of the descending boat to signal first at his pleasure.

3rd. Does not Rule 1 expressly provide that the pilot of the ascending boat shall signal first?

Ans. Yes, sir.

711 4th. Are you acquainted with the Ohio River from Eli Ryl's house to Warsaw, Ind.?

Ans. I am.

5th. Suppose on a gray night, when there was a slight drizzle of rain and snow, and some *w*ind blowing in a sou*th*westerly direction, the water about 15 feet in the channel, a boat, the size the United States was before the collision, was coming down the river about Eli Rayl's house, and the pilot of said boat was to see an approaching steamer at or near the Warsaw , a distance of about two miles, would the pilot-rules aforesaid justify the pilot of the descending boat to signal first when the two boats were about a mile apart?

(Objected to, because not cross-examination, and assumes as facts what does not appear in this case.)

Ans. Yes, sir; if the ascending boat did not blow, it was the duty of the pilot of the descending boat to signal first, with the speed and power of those two boats considered.

6th. Then you think an ascending boat like the America ought

712 to signal the descending boat when they are a mile apart, at the place indicated in the preceeding question, and on such a night?

(Same objected to as last by deft.)

Ans. Yes, sir; I do, on such a night.

7th. Would there be anything on such a night and stage of water to indicate to a pilot of an ascending boat going around the Warsaw Bend that a descending boat which he could see two miles off, above Rayl's house, would signal first; if so, state what it would be.

(Same objected to as to 5th question by deft.)

Ans. Such a night as that, you could not see a boat two miles off, only the dimness of her lights; you could tell whether it was a flat boat or lights on shore, or a steamer.

8th. How far could see an approaching steamer on such a night at that point?

Ans. You could see one at the distance of two miles, that is, her lights, but you couldn't tell what kind of a boat it was.

713 9th. At what distance could you tell what kind of a boat it was?

Ans. The nearer you got to it the plainer the object would be; within the distance of a mile you could tell whether or not it was a steamboat.

10th. What means would the pilot of the ascending boat at that distance have of knowing that the descending boat would signal first?

Ans. He would know *on* might know then that if he didn't blow the descending boat would at that distance.

11th. He couldn't blow any sooner until he could tell what the descending object was; he must be certain it is a steamboat before he signals, must he not?

Ans. No, sir; he could blow at any time he wished to in meeting the descending object, if he was not confident whether it was not a steamer; he has a right to blow, either the ascending or descending pilot.

12th. If the pilot of an ascending boat on such a night, near the
714 Warsaw bend, sees what he takes to be a descending boat at the distance of two miles, how soon in your judgment ought he to signal?

Ans. He ought to signal in time if he is not confident whether it is a steamer or not; if he sees what he takes to be a descending boat, he ought to signal when he gets with' a mile of the descending boat, especially if the boats were such boats as the United States and America.

13th. Did you ever pilot on the United States and America, or either of them?

Ans. I have in making trips up and down the river, but not as an employed pilot.

14th. You say the pilot of the descending boat, on such a night and at such a place, ought to signal first. I also understand you to say that the pilot of the ascending boat ought also to signal first when the two boats are about a mile apart; is there not great danger in following such a construction of the pilot-rules, of both pilots blowing at the same time, and thus each drown the signal of the other?

715 (Objected to by defts. atty., because the witness has not said that both pilots ought to blow first, but only if the up-stream boat did not blow first at about that distance, then the down-stream boat might.)

Ans. I made no such statement.

15th. Which pilot ought to blow first on such an occasion?

Ans. If the ascending boat does not blow when that distance (one mile) apart, it is the duty of the down-stream pilot to blow.

16th. How and at what distance is the down-stream pilot to know that the up-stream pilot is not going to blow?

Ans. He may be deceived in the distance between the steamers, and each pilot may be awaiting to find what the object is approaching on which they see the lights. The down-stream pilot may judge quicker or be sooner convinced than the up-stream pilot what the object is, whether it is a steamer or not.

17. The down stream pilot cannot expect the up-stream pilot to blow before the boats are a mile apart?

716 Ans. No; but they can judge in that distance that they are a mile apart.

18th. A prudent pilot on the up-stream boat, like the America, on such a night would blow when, in his judgment, the boats were about a mile apart, would he not?

Ans. Yes, sir.

19th. In answer to question 10, direct examination, you state you have often blown your whistle on the up-stream boat when the down-stream boat would commence blowing at the same time, and you could not then hear her whistle, but could see the steam of it. Now, look at rule 1, and tell me, if the pilot of the down-stream boat in those cases had strictly followed the rule, *of* the drowning of the sound of whistles would have occurred.

(Objected to by defts.' atty., because it seeks to apply the rule and construe it with reference it with reference to a single case merely, and not generally, and is therefore incompetent and irrevalent, as well as leading.)

717 Ans. No, sir; there would have been no accident if the pilots had understood each other.

20. Does not rule 1 limit the right of the pilot of the down stream boat to signal first when the danger of navigation, darkness of the night, or *or* other causes equally open to the observation of the pilots of both boats render it necessary, in his judgment, for him to do so?

Ans. That depends upon the position of the two boats in a close place. If the ascending boat whistles or signals for sides, and the descending boat cannot manage to get that side, he can signal for the other side. Then it is the option of the ascending pilot to give sides.

21st. In such cases, then, it is necessary to slacken the speed of the boat almost entirely or to stop the boat until an understanding can be had?

Ans. Yes, sir.

22d. Then it is not the latter clause of rul' one, commencing, "If the navigation," &c., that gives the pilot of the descending boat the to signal first?

718 Ans. No. It gives him an understanding of what to do with the other pilot as to signals, and exchanging that way.

23rd. Then the right of the descending pilot to signal first depends upon the custom of pilots, when the pilot of the ascending boat has not, in the judgment of the pilot of the descending boat, signalled when he ought to have done so?

Ans. That is according to the judgment of the descending pilot. Yes, sir; it does.

24th. Then a pilot of a descending boat, in your judgment, ought not to signal the ascending boat first, unless in his judgment the pilot of the ascending boat has come neare' than he ought to have done without sig'aling?

Ans. Yes, sir; such is my judgment.

25th. Do you remember where you were on the night of the 4th of December, 1868, the night of the collision between the United States and the America?

Ans. Yes, sir. I was in this city, but not on the river. I was
719 up until one o'clock that night.

26th. Yo' state, in answer to questions 6 and 7, that gray night' are night' when river shores and hills look alike, and all seem to be on a level, and in such night' pilots are often deceived in the distance of an object; that an object or a boat may appear a half a mile off, when in reality it is not more than 200 yards off, and everything has a dimness of sight. I will ask you if a prudent and careful pilot on such a night would navigate a steamboat as large as the United States towards an approaching steamboat at the rate of 15 to 17 miles an hour, even if he though' the approaching steamboat was a mile off at the time?

(Objected to because the question is not cross-examination, and assumes what are not the facts of the case, and is leading.)

Ans. Yes, sir; he would. Then he has something he could see to steer by; it isn't like fog, when he can't see anything.

27th. How would he know but what he was deceived in the
720 distance the boat was off? She might appear to be a mile off, and yet not be more than a quarter of that distance. Don't you think it would be more prudent to go slower, rather than run the risk of a collision?

Ans. In that distance off, his judgment might deceive him. If they were going to have a collision, it would be best to stop his boat entirely.

28th. Would a prudent and careful pilot, in your judgment, in a gray night, in going up stream, after signalling an approaching steamboat, and not hearing an answer, taking it for granted that his signal had been answered, and keep on at the rate of 12 miles an hour until the boats were 500 or 600 yards apart before signaling again?

(Same objected to as that *of* 26 question.)

Ans. I would not do it myself, although I have several times known it to be done. It is not prudent and careful to do so.

(Answer objected to by deft.)

721 Re-examination by defts.' atty.

1st. Do you know anything of the manner in which the steamboats United States and America we' handled on the night of that collision, or how their whistles were blown, or the speed at which they were running, or at what distance the' stopped their engines?

Ans. None, only from hearsay.

2d. You have been asked a great many questions on suppositions as to the conduct of the two pilots; not state who, under the circumstances of two boats meeting, are the best and most competent judges as to what should be done under such circumstances?

Ans. The pilots of the two b'ats at the time.

3rd. You have been asked a number of questions also, on cross-examination, upon supposed cases with reference to these two boats concerning the whistles; state how it is with reference to which side those b'ats take when meeting at or about the place of the collision,
722 when there 15 to 20 feet of water in the channel. State whether there is any *un*variable rule about it, or not.

Ans. There is no *en*variable rule about it. It is the option of the pilots.

JOHN W. OYLER.

The further taking of these depositions in this case is now adjourned until to-morrow, December 1st, 1870.

N. R. WILSON,
Notary Public, Jefferson County, Kentucky.

DECEMBER 1st, 1870.—The further taking of depositions in this case is resumed pursuant to adjournment, at the place and between the same hours named in the said notice.

723 *Deposition of Wm. Smith.*

And the said WILLIAM SMITH, being duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposes as follows, viz:

Quest. by deft.'s atty.:

1st. State your name, age, residence, and occupation at present; and how and where you were engaged in December, 1868; and, if you have been a pilot, how long have you been so engaged?

Ans. My name is William Smith; age, 62 years; residence, Louisville, Ky.; occupation, pilot on the river. I commenced piloting in 1836, and have been so occupied ever since, (except a part of the time I was commander of boats.) In December, 1868, I was piloting between Cincinnati and St. Louis.

2nd. Are you not acquainted with the rules governing pilots during the month of December, 1868, between the ports of Louisville and Cincinnati on the Ohio River? I mean the rules in force at that time.

724 Ans. I am.

3rd. Was it or not the custom among pilots for the pilot of the descending boat to sound the first signal, under certain circumstances; and, if so, under what circumstances would he be justified in sounding the first signal? I mean by that, under what circumstances would he be justified in his sounding his first signal before he had heard a signal from the ascending boat?

Ans. The circumstances which justify the sounding of the first signal by the descending boat are in cases of wind, when the wind is blowing in the same direction the descending boat is going, and blows the smoke from the boat ahead of her, and thereby preventing the pilot of the ascending boat from seeing the descending boat. In that case the pilot of the descending boat would be justified in sounding his whistle first, in order to notify the ascending boat where he was.

4th. Suppose a descending boat approaches within the distance

725 to which her pilot thinks the ascending boat should have signalled her, would it or not be prudent and careful for the pilot of the descending boat to signal the ascending boat, notifying the ascending boat by such signal which side & what course the descending boat would take?

Ans. I think it would. It has always been my practice to do so. If I meet an ascending boat, when I think she comes within the distance required for her to signal and does not signal, I always blow my whistle, and think it my duty to do so.

5th. Is it or not, in your judgment, a matter that rests in the judgment of pilots of the two boats, ascending or descending, whether or not he shall blow first, or whether he shall wait until he hears the signal of the other boat? Do not certain circumstances control the action of the pilot of either boat, and is he not governed by the circumstances that surrounded the case, and under the law and rules controlling pilots, is it not their duty to use their best skill and judgment, and to handle their boats accordingly?

726 Ans. I think the pilot should be governed by his own judgment as to when he should signal, and he should be governed by the circumstances surrounding the case, although his action, based upon his judgment, comes in contact with the pilot rules. There are circumstances that render it absolutely necessary for pilots to act on their own judgment, regardless of rules. I don't wish to be understood that I would come nearer the approaching boat than the rules allow if I could help it, but there are circumstances under which it could not be helped.

6th. Do or not circumstances occur under which you are compelled by your judgment to violat' the strict letter of the rules as to who shall signal first; and is or not your action under such circumstances dictated by a proper sense and regard for the safety of your passengers and cargo?

Ans. Yes, sir; circumstances surround a pilot nearly every trip, and sometimes a dozen times in one trip, in certain stages of water—

727 I mean in low water, when both boats are required to keep the channel—which compels him to violate the strict letter of the pilot rules, and his action under such circumstances by a proper sense and regard for the safety of his passengers and cargo.

7th. It it or not a fact that the pilot' of the up-stream boat and the down-stream boat may sound their signal by whistle at the same time, and that the signal of one boat may drown the signal of the other; and

is it or not a fact that a boat may sound a signal which you can only know in windy weather, and in d'y-time, by seeing the steam escaping from the whistle when you cannot hear the sound of the whistle?

Ans. It is a common thing for two boats to sound their whistles together and at the same time, and the sound of one is drowned by the other, and in sultry and in windy weather I have many a time answered an approaching boat's whistle just from seeing the steam from the whistle, without hearing the sound of it.

728 8th. Are you or not acquainted with Jacob Remeleen and N. B. Jenkins, and of their reputation as pilots? If so, state their character, standing, and reputation as pilots.

Ans. I am personally well acquainted with both of them, and have piloted a great deal with said Remeleen. Their reputation as pilots and their moral character for sobriety is as good as any pilot on the river.

Cross-examination by plff.'s atty.:

1st. Where are you employed now?

Ans. Am not employed now; am too unwell. Was last employed between Cincinnati and St. Louis; was so employed in 1868 and 1869, up to the time I broke my arm, since which I have not been employed.

2. Do not the pilot rules prescribed by the supervising in-
729 spectors which were in force in December, 1868, require the pilot of the ascending boat to sound the whistle for side?

Ans. I think it does.

3rd. Then, if I understand you, the right of the pilot of the descending boat to give the first signal depends upon such circumstances as smoke obscuring the vision of the ascending boat, or when the pilot of the ascending boat neglects, or from any other cause fails to signal in time when he ought to do so; and the pilot of the descending boat has not the right to signal first at his pleasure, without good cause?

Ans. That is my understanding and my practice.

4. Suppose the Ohio River to have fifteen feet of water in the channel, and two steamers the size of the United States and America were in 1868, are approaching each other on a gray, drizzly night, at a place where the river is from 500 to 600 yards wide, and suppose the down-
730 stream boat is going from 15 to 17 miles an hour, and the up-stream boat twelve miles an hour; and suppose the pilots of the two boats see each other's signal-lights when they are 2 or 3 miles apart; and suppose the channel between the two boats to be sufficiently wide to pass with safety. Now, taking all these circumstances supposed into consideration, which boat, in your judgment, should signal first, and at what distance from the other boat?

(Objected to by defts.)

Ans. Taking these suppositions together, I should say that the ascending boat should signal first; at about 800 yards; I should think a proper distance.

5th. Do you think it would be safe to wait until they had approached to 800 yards of each other, taking into consideration the speed at which said boats are supposed to be going, and their size and power, before signalling?

(Objected to by defts.)

Ans. I don't think there would be any danger in coming that night or a little nigher, unless there was a cross-whistle, where the river was that wide.

731 6th. Does not rule 2, which was in force, then provided that the

signal shall be given, answered, and fully understood before the boats get nearer than 800 yards of each other, and if not so given, answered, and understood, the boats shall be stopped and not started again until the signals are given, answered, and fully understood; and is it not necessary for the boats (with the power, size, and going at the speed supposed) to commence to signal at a considerably greater distance than 800 yards in order to give sufficient time for the signal to be given, answered, and understood before getting nearer than 800 yards of each other?

(Objected to by deft.'s atty.)

Ans. I don't exactly know the words of that rule now. It has been some time since I read it, but I don't think it does provide that the signal shall be given, answered, and fully understood before the boats get nearer than 800 yards of each other. I think the rule does provide something like what is stated in the second clause of the question,
732 but circumstances sometimes render it impossible to conform to the rule. I don't think it necessary for the boats to commence to signal at a greater distance than 800 yards in order to give sufficient time for the signal to be given, answered, and fully understood.

7th. Ought not the pilot of the down-stream boat, when the river is sufficiently wide to pass, wai*d* a reasonable time to give the pilot of the ascending boat an opportunity to signal?

(Objected to by deft.)

Ans. He should wai*d* until his judgment told him different. If he though' the other boat was no' going to do it in time, then he ought to do it himself.

8th. You speak of whistles frequently happening at the same time and drowning each other. Is this not more likely to happen in a case where the down-stream pilot blow' his whistle before he has any right to think the up stream pilot had either forgotten or neglected to whistle in time?

733 (Objected to by defts.)

Ans. A pilot does not do so; but if you suppose such a case, I don't think it more likely to happen because the descending boat blowed first than if the other had blowed first.

9th. In answer to the case supposed in my 4th cross-interrogatory, you say: "The pilot of the ascending boat ought to signal first at the distance of 800 yards." Now, in that supposed case, would the pilot of the descending boat be justified in signalling the up boat before they were within 800 yards of each other; and if he were to signal first before or at the time the boats were 800 yards of each other, would there not be great danger of the pilot of the up boat signalling at the same time, and thus drown the signal? The notary, if you desire, will read you the said 4th cross-interrogatory.

(Objected to by defts.)

Ans. I don't think the answer to the said fourth interrogatory
734 is properly put down. I don't think I said it was the duty of the pilot to do so. I said it would be safe for him to do so. Of course, in a clear night, when you can see the position of the other boat, you would wait longer on it to signal than you would on a dark night, when you could not see her position. I don't think (in answer to the second clause of the question) there would be any great danger of the whist'es sounding together and drowning each other.

10th. You say the pilot of the up boat, if he followed the rule, would whistle at the distance of 800 yards. Would not the pilot of the down boat have a right to expect him to whis'le a' that distance?

Ans. I think he would, but I think, also, that pilots differ in their judgment of distances on the river.

11th. Yes, but I am speaking of a case where the pilot of the down boat, in his judgment, thinks the up boat is no nearer than 800 yards. In such a case would it not be his duty to expect a signal from the up boat at that distance?

735 (Objected to by defts.)

Ans. If my judgment told me she was not nearer than 800 yards, I would wait a short time for her to whistle.

12th. Now, suppose the pilot of a down boat to whistle first, when his judgment taught him the up boat was no nearer than 800 yards, wouldn't this be a violation of his duty, and would it not likely cause a drowning of the signals?

(Objected to by defts.)

Ans. I don't suppose, if you are supposing cases, that any man would do it, as he is actuated by his best skill and judgment. It would not be a violation of his duty if his judgment told him so, and would not cause a drowning of whistles more than any other way.

13th. Do I understand you to say that it would be a violation of a pilot's duty to do that which you do not suppose any pilot would do?

(Objected to by defts.)

736 Ans. I can't answer any such questions.

4th. Why?

Ans. I think it is contradiction in itself, and a question and answer all at the same time.

15th. Have you any interest or feeling in this suit?

Ans. None whatever. If I had, it would probably be for the other side. I don't know the other party, but I know Captain Shirley here; but there is no particularly friendly feeling between us. He has never done anything to favor me.

WILLIAM SMITH.

STATE OF KENTUCKY,
Jefferson County, ss:

I, N. R. Wilson, a notary public in and for said county, do hereby certify that Henry Christopher, James W. Gaslee, John L. Crane,
737 John W. Oyler, and William Smith, the above-named deponents, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the case now pending in the common pleas court of Jefferson County, State of Indiana, wherein Charles Alling, admr. of Otis B. Sappington, is plaintiff, and Thomas Shirlock et al. are defendants; that the depositions were all written by me, and that the deponents subscribed their respective depositions after the same had been carefully read over to them; that the adverse party (the plaintiff) was, by his attorneys, present at the taking of said depositions; that all of said depositions were taken at the law-office of Caldwell and Caldwell, in the city of Louisville, (near the court-house,) in Jefferson County, State of Kentucky, and were commenced on the 29th day of November, 1870, between the hours of 6 o'clock a. m. and 6 o'clock p m. of said day, and adjourned and continued from day to day, (Sunday excepted,) between the same hours aforesaid, until completed, agreeably in all respects to the annexed notice.

In witness whereof I hereunto subscribe my name and affix my official seal this 2nd day of December, A. D. 1870.

738 N. R. WILSON,
Notary Public, Jefferson County, Kentucky.

C. G. Pearce.

Defendants also offered as a witness Captain C. G. Pearce, who was then in court, and who was one of the defendants, and offered to prove by him that he was a passenger on the steamboat America, and that the collision took place in the channel some 150 or 200 yards from the Indiana shore, and south of the low-water mark; that immediately after the collision the steamer United States was rounded to by the wheels, and thereby driven some one hundred yards nearer the Indiana shore; that when the collision took place, in order, if possible, to get the passengers ashore, that the said steamer was not driven into the shore by the force of the collision and momentum of the boats; and to prove generally the exercise of due care by the officers and crews of the steamers United States and America.

And the plaintiff objected to the examination of said Pearce
739 to prove the said facts, because he was a party to the suit, and the court refused to permit the defendant to prove said facts by said Pearce, to which refusal counsel for the defendant at the time excepted, and his exception was allowed and ordered to be made a part of the record.

Revised statutes of Kentucky offered in evidence.

The defendant also offered to read in evidence from the revised statutes of the State of Kentucky, published by the authority of the general assembly of Kentucky, and so appearing to be published in the title-page, and which title-page is as follows, to wit:

"Printed by the authority of the general assembly of the commonwealth of Kentucky. The Revised Statutes of Kentucky, appeared and adopted by the general assembly, 1851–1852, and in force from July 1st, 1852; with all the amendments subsequently enacted, and notes of the decisions of the court of appeals of Kentucky, and an appendix containing all the enactments of the legislature passed during the session of 1859 & 1860. By Richard H. Stanton. Vol. II. Cincinnati: Robert Clark & Co., 1860."

740 Sections 3 and 4, on pages 510, 511, and 512, of said volume, and which reads as follows, to wit:

"SECTION 3. That if the life of any person is lost or destroyed by the wilful neglect of another person or persons, company or companies, corporation or corporations, their agents or servants, then the personal representative of the deceased shall have the right to sue such person or persons, company or companies, corporation or corporations, and recovery primitive damages for the loss or destruction of the life aforesaid.

"SECTION 4. The action under this act shall commence within one year from the time of such death.

"Approved March 10th, 1864."

To the reading of which sections of said statutes in evidence plaintiff's counsel objected, on the ground that it was immaterial; w'ich objection the court sustained, and excluded said evidence; to which ruling of the court the defendant excepted at the time, and his exception was allowed.

741 *Cases in Kentucky Reports offered in evidence by defts.*

Defendants also offered to read in evidence the following cases from the books of reports of the court of appeals of said State of Kentucky, to wit:

The case of Eden vs. Lexington and Frankfort Railroad Company, 14 Ben. Monroe, page 204 to 208, inclusive, to wit:

"The only question, and it is an important one, that arises in this case is, whether the husband, whose wife has been killed on a railroad by a collision produced by the carelessness and misconduct of the agents who were managing and directing the running of the locomotive and cars at the time can maintain an action against the company for an injury sustained by him in consequence of the death of his wife.

"The facts alleged to sustain the action are, that the wife of the plaintiff, who was riding in a carriage passing over the railroad on a public highway, with which it was intersected, was killed instantly by the locomotive and cars running against the carriage; that the injury resulted from the carelessness and negligence of the defendant's agents,
742 who were conducting the train at the time, and from the failure of the defendants themselves to use, or to require their agents to use, in approaching the intersection of the roads at that point, such precautions and measures as prudence dictated, and such as were essentially necessary to the safety of those persons who might be traveling on this public highway.

"The circuit court having decided, upon a demurrer filed by the defendants, that an action could not be maintained, the plaintiff has prosecuted a writ of error to reverse that judgment of that court.

"Two grounds have been assumed in argument in support of the judgment: 1st. That the killing, if it occurred in the manner alleged by the plaintiff, was, in law, a felony, and it is a rule of common law that before the party injured by any felonious act can seek civil redress for it the matter should be heard and disposed of before the proper tribunal, which has not been done in the present case.

"2nd. According to the well-settled doctrine of the common law,
743 the loss of human life cannot be complained of as a civil injury; that such an action can only be maintained when it is expressly authorized by a statute, and we have no statute on the subject. The plaintiff' right to the action must be denied, as it has to be determined by the common-law principals.

"1. At common law a party injured by an act which is felonious cannot seek civil redress for it until the matter has been investigated and disposed of before the appropriate tribunal. The avowed object of the rule is to prevent the criminal justice of the country from being defeated, and, consequently, after a verdict and judgment, either of acquittal or conviction, this rule, which is founded upon the general policy of the law, has no further operation.

"The existence of this rule has not been recognized in this State. In the case of Williams vs. Hendricks, printed decisions, 203, it was expressly repudiated as having been based on a mistaken policy, and the court held the justice and reason alike dictate that for every
744 civil injury compensation should be made; and that when a person committed a criminal offence he was not only liable to prosecution for the public wrong, but also to an action for the civil injury. This rule has also been changed by express legislation. By the revised statute, it is enacted (chapter 28, section 4,) that "commis'ion of a felony shall not stay or diverge any civil remedy of the party aggrieved against the felon." This statutory provision, it is true, does not have any effect upon the decision of the questions arising in this case, because the suit was commenced before the revised statute took effect; but we regard this enactment as merely declaratory of the law, as it had been settled and expounded by this court, and not as changing an existing rule of law which the legislature deemed it proper to alter.

"2. But, according to the principles of the common law, injuries affecting life cannot in general be the subject of a civil action. In other inferior felonies the civil remed' is merely suspended until after the
745 conviction of acquittal of the supposed felon; but for injuries for life the civil remedy is considered as being entirely merged in the public offence. This was said to be established by common-law doctrine in the case of Baker vs. Balton, 1 Campbell, 493. There the husband and wife were riding on the top of the stage, which overset, and the wife was injured so that she died. The action was brought by the husband for loss of society, &c., and Lord Ellenborough held that there could be no recovery for the distress of feeling and loss of society, &c., except from the moment of the injury to the wife up to the time of her death.

"The cause of action for injuries to the person dies with the person injured, and it follows, as a natural consequence, that the cause of action having itself abated, no separate action can be maintained for such damages as are exclusively consequential. But for the aggravate' injuries to the person of the wife or child, the husband or parent has an independent and separate cause of action for the loss of the society of the wife or the service of the child, as the case may be. This
746 cause of action does not abate by the subsequent death of the wife or child, but the death of either effect the extent of the recovery, as by that went all further claim to the society of one or the services of the other, ceases and determines; and the rule still prevails, although the death that produces this effect results from the same injury which gives use to the action. The reason of this seems to be that all injuries affecting life, caused by the misconduct of another person, involves the commis'ion of a public wrong, which merges the remedy for all private loss ensui'g after death has occurred and occasioned by it. Consequently, the death of the person injured has practically the same effect on the civil remedy, whether it results from the injuries inflicted or from natural causes. In either case the estimate of damages stops at the instant of death.

"It has been decided in New York that where a child has been killed by the wilful or negligent conduct of a third party, the parent has a right to recover, not only for the loss of the services of the child, but also for the expenses attending the sickness of the wife, produced
747 by the shock which the death occasioned to her feelings, (20 Wend., 210.) But in a late case it has been decided, in the same State, that such third party is liable only to the amount of the medical charges and the funeral expenses of the child. (3 Comst., 489.)

"A similar decision has been given in Massachusetts, (1 Cush., 475,) and in the latter State it has been held that an action cannot be maintained by a father to recover damages for the loss of his child, in consequence of the death of the child occasioned by the carelessness or fault of the agent or servant of a railroad corporation. (Cary and Wife vs. Berkshire Railroad Company, and Skinner vs. Housatonic Railroad Company.

"The law on this subject has been lately changed in England by statute, and now in that country the person who would have been liable if death had not ensued is liable in an action of damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amounts in law to a felony. An act has been passed by the legislature of Massachu-
748 setts on the same subject, and also, we believe, by the States of

New Hampshire and Connecticut. In this State the common law doctrine has not been altered.

The injury complained of in this case is the loss of the society of the wife and her assistance in the management of the husband's domestic affairs. According to the existing law, there can be no recovery for this injury, inasmuch as the death of the wife was instantaneous, and it is only for the loss that is sustained by the husband in this respect from the moment of the injury up to the time of the death of the wife for which any recovery can be had.

"Wherefore the judgment is affirmed. Shy and Beck for the plaintiffs; Beckner and Dudley for defendants."

Cases cited in Kentucky Reports, as offered in evidence by defts.

The defendants also offered to read in evidence the case of Louisville and Nashville Railroad Company vs. Fillburn, administrator, from 6th volume of Bush's Kentucky Reports, pages 574 to 580, inclusive,
746 which is in the words and figures following:

"During a storm which occurred on the night of the 16th of March, 1868, a dead and partially decayed oak tree, which stood on the road-bed and near the track of the Louisville and Nashville Railroad, fell across the track, by which the engine of an express train, on its way from Nashville to Louisville, was thrown from the track, and Thomas Fillburn, the engineer, was instantly killed.

"The widow of Fillburn, having become the administrator, brought this action against the railroad company for the recovery of primitive damages under the provision of 'An act for the redress of injuries arising from the neglect and misconduct of railroad companies and others,' (2 Revised Statutes, 510;) the petition alleging in substance that the life of the plaintiff intestate was lost in consequence of the wilful neglect of the defendant in failing theretofore to remove the tree.

"The answer of the defendant controverted the allegation of the petition importing the charge of the wilful neglect; and also set
750 forth as a defense that said Thomas Filburn, by his own neglect and want of care, as engineer in the service of the defendant, contributed to and cause' the accident which was the immediate cause of his death.

"A trial of the cause resulted in a verdict and judgment for the plaintiff for ten thousand dollars, and the court having refused the defendant a new trial, it has appealed to this court.

"From the evidence it may suffice to say that from the dead and decaying condition of said tree and its proximity to the road, there had long been such apparent danger of its falling on the track, and thus imperiling the lives of the passengers and employees on the road, as to require its removal, and therefore negligence in some degree was implied by the failure of the officers and agents of the corporation to remove it; and, moreover, the attention of the "section boss," an officer subordinate to an engineer and subject to his orders, had been drawn to the necessity of removing the tree but recently before the dis-
751 aster; yet the danger and consequent necessity of removing the tree might have been observed by Filburn as well as by other employees engaged in running trains on the road; and if there were, it was his duty to cause the removal of the tree or report the necessity of doing so to some superior officer.

"The questions presented for the decision of this court, so far as deemed

essential, involve the action of the court below in relation to the instructions to the jury, rejecting several instructions asked by each party. The court, of its own motion, instructed the jury, in substance, that it was the duty of the corporation to keep the road free from all objects and obstruction which might imperil the safe transit of trains; and that duty rested on all its agents engaged upon the road in the transit of trains, and especially on the road-master and his subordinates, the 'section bosses;' and if the jury believe from the evidence that either of these knew or was notified that said tree was decayed, and from its condition subject to fall or be blown across the road, and thus imperil the safe transit of trains, and was so appri*e*s long enough to have
752 removed the peril, and failed to do so, such failure was wilful neglect within the meaning of the statute. And if the jury believe from the evidence that the death of Filburn was caused by such neglect, and that he could not by the use of ordinary care and diligence on his part as an employee of the defendant have avoided the consequences of such neglect, the law was for the plaintiff, and they should so find. If, however, Filburn, as an engineer and employee of the defendant, by the use of ordinary care and diligence on his part, could have avoided the consequences of such neglect, and failed to do so, then the jury should find for the defendant.

"These expositions of the law of the case are question'by the argument of the appellant as erroneous and misleading, and we think rightly so. By the definition of the court of the duty of the corporation as to objects and obstructions which might imperil the transit of trains, and the responsibility arising from the failure of the agents of the corporation
753 to remove such danger, the jury were in effect told that ordinarily the defendant was not only liable for negligence, either proximate or remote, but that they must regard all accidents or misfortunes occur'ing in consequence of the falling or displacement of natural objects along the line of the road as the result of such negligence, and especially so if the objects were such as could have been removed, whether trees not apparently dangerous or masses of stone or embankments which might fall upon the track, but probably never would.

"From the nature of the country through which the appellants' road passes, and the great expense, if not impossibility, of rendering its track entirely secure from liability to accidental obstructions, it could not be expected that every possible cause of danger could be removed, and while in the run'ing operations of the road the law expects of the corporation a degree of care and vigilance commensurate with the importance of that business, and the peril which might arise from neglect, it is not required to provide against all such unforeseen accidents or misfortunes as could not be averted by the utmost diligence in the
754 management of the road; and as the jury, in passing on whether there was or not wilful neglect of duty on the part of the corporation, acting through its agents, may have been misled by a misapprehension of the scope and extent of the duties of the corporation, it was erroneous and prejudicial to it for the court in its instructions to ascribe to it obligations which the law did not impose.

"It is contended by the appellants that as both Filbern and the 'section boss,' to whose delinquency the disaster was imputed, were both engaged in the service of the corporation in the same general branch of its business, having in view the safe passage of trains over the road, the maxim respondat superior does not apply in behalf of the representatives of Filbern in the case, and we are refer'ed to the cases of the Ohio and Mississippi Railroad Company vs. Hamersley, 28 Ind., 371; Wright

vs. New York Central Railroad Company, 25 New York, 562; Furwell vs. The Boston & Worcester Railroad Company, 4 Met., (Mass.,)
755 49, and other adjudged cases in this country and in England, as authority. But so far as these decisions may support the principles asserted in this case, that the fact that the injury complained of was suffered by one employee in consequence of the neglect of another in the same general service exempted the corporation entirely from responsibility for the injury, it will suffice to say that this court, in the case of the Louisville and Nashville Railroad Company vs. Collins, (2 Duvall, 114,) carefully reviewed the rule now sought to be applied; and while therein exemption is conceded as to common hazards incident to the acceptance of employment in connection with others, and which the employee is presumed to have undertaken to risk, the rule is applicable to cases of gross or wilful*l* neglect on the part of another servant, by whose want of fidelity or criminal fault harm results to his fellow employee in the discharge of his duty, was rejected 'as inconsistent with principle, analogy, and public policy,' and it was held in that case, as in the subsequent case of Louisville an' Nashville Railroad Com-
756 pany vs. Robinson, (4 Bush, 507,) that the implied undertaking of employees in the same service to risk the contingencies which the ordinary skill and care of each, in his line of service could not avert did not exonerate the company from liability for damages resulting to one of such co-agents from the extraordinary or gross neglect of another of them.

"Adhering to the law as thus expounded by this court, we are of the opinion that the court did not err in rejecting the rule contended for as recognized in some of the English and American cases to which we have referred.

"It is further insisted that the court should have instructed the jury that if there was a neglect of duty on the part Filbern as well as the section boss in failing to cause the renewal of the tree, the plaintiff could not recover. This was not the law, if the section boss or some other agent of the company than Filbern was alone guilty of negligence, causing the death of the latter, although in his own sphere he may have been guilty of some neglect of duty. (Louisville & Nashville Rail-
757 road Company vs. Robinson, supra.) But there is another and, we think, fatal objection to the action of the court is so instructing the jury as to make the question of wilful*l* neglect depend on the knowledge or belief of the road-master or section-boss as to whether the tree was decayed and subject to fall or be blown down across the track, and his failure, though so apprised, to remove it. These were the facts from which the jury might have inferred wil*l*ful' neglect, but they did not necessarily constitute it.

Whether or not the willful neglect is the same as gross neglect, or in any case more or less culpable, it must, we think, involve either an 'intentional wrong or such a reckless disregard for security and right as to imply bad faith,' and the court should have substantially so informed the jury.

"Wherefore, for the reasons indicated, the judgment is reversed, and the cause remanded for a new trial and further proceedings not inconsistent with this opinion."

And this was all the evidence given in the case; and therefore the plaintiff asked the court to instruct the ju'y as follows:

758 INSTRUCTIONS ASKED FOR BY PLFF.

6th. If the evidence shows that the steamer United States and the steamer America, on the night of collision and before it took place, and by proper lookouts and ordinary prudence and care, be seen from on' to two miles apart, and if it shows said boats, or either, were not seen, for want of a proper lookout on the America, until in such close proximity that the injury was inevitable, and that thereby the injury was caused, such acts tend to establish negligence in the defendants.

21 How. U. S. R., p. 568.
6 Wal. U. S., p. 224.
3 Wal. U. S., p. 268.
Given, and excepted to by defts.

LINCOLN & WALKER, *For Defts.*

7th. If the jury find from the evidence that the employees of the defendants engaged in navigating said boats just before the collision saw each the other boat while they were from two to three miles apart, and if the jury find that said boats were accustomed to pass at and about that point, and if the jury find that the river at the point of the collision was wide enough for said boats to pass without danger, with
759 proper care, and if the jury find that the collision did occur, then such circumstances tend to show negligence, and it devolves on the defendant to show that the collision was not caused by their neglect or omission.

3 Wallace, p. 314.
" " " 173.
32 N. Y., p. 339.
Given, and excepted to by defts.

LINCOLN & WALKER, *Defts'. Attys.*

8th. In order to prove that an accident was inevitable, it is not always necessary to show that under the circumstances existing at the time the accident happened it could not be avoided, for if by culpable negligence the party complained of brough' his property into circumstances of such difficulty or peril as to make it impossible for him to escape without injuring another, he cannot excuse himself, and in this case the wrongful acts or omissions of the employees of the defendants on the America and the United States, or either, placed the boats in such a position that collision was, by such acts or omissions, made inevitable, a col-'ision which, by proper care and vigilance used at the proper and
760 prudent time, could have been prevented, then in such case the collision is the result of negligence.

Given, and excepted to by defts.

LINCOLN AND WALKER, *Defts'. Attys.*

14th. Court please charge the jury :

1st. That the inspection, enrollment, and license of the United States, and the fact that she had good and ample machinery on board, if proven, is no defense to an action brought to recover damages for injuries caused to passengers by the careless and negligent acts of the officers, for in such cases the claim is not that the machinery and boat were defective, but upon carelessness in managing a well apparaled and good boat.

Given, and excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

No. 15. Court please charge the jury for plaintiffs as follows:

If the jury find from all the evidence that the steamers United States and America were at the time of the collision (if collision is proven) owned by the defendants, and if they find that the said steamers collided in Switzerland County, Indiana, as charged in the com-
761 plaint, and if you find from all the evidence that the collision would not have happened if the officers and pilots of said steamers, or either of them, had used due care and prudence in navigating said steamers and giving signals, and if you find for want of such and prudence of the employees controlling and navigating such steamers said collision was caused, and if you find that said collision set fire to the steamer United States, and by reason thereof, without his fault, Otis B. Sappington was burned to death, and left surviving the next of kin as charged in the complaint, then in such a case you must find a verdict for the plaintiff in this action.

Given, and excepted by defts.

LINCOLN AND WALKER, *For Defts.*

16th. In determining whether such collision would probably have taken place if due care and caution had been used by those bound to use such in navigating said steamers, or either of them, you may consider it proven the width of the river at, above, and below the point and in the vicinity of the collision; and also the fact proven that the pilots of said boats saw each the other boat when they were a mile apart; may also consider the fact (if proven) that boats and machinery were in
762 good working order, and may also consider the fact (if proven to your satisfaction) that said boats could have avoided said collision if the pilots had only followed the channel and the other bourne to the right or left thereof, and also consider the fact (if proven) that due attention and care were not given to the signals.

Given, and excepted by defts.

LINCOLN & WALKER, *Defts.' Attys.*

17th. It has been admitted by the defendants in open court that at the time of the collision they owned and navigated the steamers United States and America. It will make no difference in this case whether one or both of the steamers were navigated and managed negligently, if there was negligence and carelessness, for the defendants are responsible for injuries caused by the negligence of either of the steamers if the' was such negligence, for each was under their control.

Given, and excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

18th. That if the United States was below low-water mark on the Indiana side of the channel at the time of the collision, (if collision
763 has been proven,) and if the jury further find that by the force and momentum of the collision the United States was forced and carried above low-water mark on the Indiana side, and that Sappington perished above said mark, then the court has jurisdiction to try and determine this cause, for in such case the death occurred above low-water mark; the laws of Indiana apply to the case to try and determine it upon the merits according to the facts that may be proven.

Given, and excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

19. In settling in your mind when Sappington died, (if death is proven,)

you may consider the nature of the fire, in what direction the flames spread, (if fire and flames and direction have been proven,) the opportunities, if any, of retreat before the flames, and in what direction and way; also consider the instinct of self-preservation, and all other matters proven, to aid you in coming to a conclusion as to said matter.

Given, and excepted by defts.

LINCOLN & WALKER, *Defts.' Attys.*

20. If you find the Ohio River, at the point of collision and at the point where the States sunk, in the dry season recedes and leaves
764 such space dry, then the sinking and collision of the United States was above low-water mark, and in the territorial limits of the State of Indiana and county of Switzerland. Low-water mark means the lowest point to which the river comes down in the lowes' stages, by means of dry seasons, the bottom or ground thus left bare and extending out from the shore, and connecting with it by ground or bottom not covered by water belongs to Indiana, though it be covered by water at a higher stage.

Hadly, les'ee, (5 Wheaton, p. .)

Given, and excepted to by defts.

LINCOLN AND WALKER, *Defts.' Attys.*

21. If you find from the evidence that the United States and the America collided in the channel of the river on the Indiana side of the center of the channel, and below low-water mark on the Indiana side of the thread of the channel, and that she sunk on said side of the channel, and that Sappington, without his fault, was burned to death by reason and cause of said collision; and if you find said collision was caused by
765 the negligence charged in the complaint, and that the parties named in the complaint are next of kin to Sappington, then the plaintiff is entitled to recover in this action.

Given, and excepted by defts.

LINCOLN & WALKER, *Defts.' Attys.*

22. Under the statute authorizing this class of actions, if the collision and death occurred in the channel anywhere along the river-line of Switzerland County, and below low-water mark, that is, further towards Indiana than the low-water mark on the Kentucky shore, this court in such cases has jurisdiction to try and determine this case upon its merits.

Given, and excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

23. If the jury find from the evidence that the United States and America collided near the line of low-water mark on the Indiana side of the channel, and if you find that from the combined actions of the wheels and of the United States, and the force and momentum given by the collision, the United States was taken above low-water mark on the Indiana side of the channel, and there sunk and burned; and if you find that Sappington did perish and die by reason of said collision,
766 without his fault; and if you find that said collision was caused by want of proper care of the employees of the defendants in charge of said boats, and left the next of kin named in the complaint, then the plaintiff is entitled to your verdict in this action.

Given, and excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

24. If you find from evidence the force and danger of the collision made it necessary to work the wheels of the United States towards the Indiana shore, and that they were worked at the time of the collision and after, directly an' for five or ten minutes, & that by said combined action of engines, current, and wheels the United States was forced above low-water mark on the Indiana side of the channel, then, as to that question, viz, the question of jurisdiction, and the right to hear and determine the action under the law is in this court, and in such case, (if proven,) and if the allegations set out in the 1st and 2nd paragraphs of the complaint are proven, the plaintiff will be entitled to recover.

Given, and excepted to by defts.

LINCOLN & WALKER, *Deft's. Attys.*

767 25. If the steamers America and United States, by the negligence and carelessness of the officers and employees, collided, and if the said collision set the United States on fire and cut her so that she was in danger of sinking, and if said collision and the danger from the fire and water made it necessary to work her engines towards the shores; and if, by reason of such situation, here engines were immediately at the time of the collision worked, and the wheels given four or five revolutions; and if the collision and acts of the employees working the engines took her above low-water mark on the Indiana side; and if the collision and working of the engines were continuous acts till she sunk, if she did sink, then the case stands the same in principle as if the force and momentum of the collision had sent her to the same point without the wheels moving.

Given, and excepted by defts.

LINCOLN & WALKER, *Defts.' Attys.*

26. If a party by his negligent conduct places him in a situation when to save himself or property h*is* is compelled to do an act which causes injury to another, then h*is* is as much liable for the injury caused as if it had been caused by the original negligent act.

Given, and excepted to by defts.

LINCOLN & WALKER, *Defts'. Attys.*

768 27th. If you find from the evidence that at the time of the collision the night was a dark, gray night, rendering it difficult to see objects on the river, and if you find the wind was blowing and rattling the guy-irons and the windows of the pilot-house, so as to have a tendency to prevent those inside the pilot-house hearing signal and endanger collision, then, in such case, it would be proper and prudent for the defendant to have a lookout on said steamer America at said time, and stationed at such place that without obstruction caused by the boat on which lookout was placed, as to be able to hear and see boats approaching on the river; and a neglect to have such lookout in such case may be considered by you on the question of negligence in this case, if such lookout was not on duty.

Given, and excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

28th. In the allegations in the complaint embracing the terms navigating and managing said boats *in* included the acts and omissions, if any, of the pilots, the captains, and the mates; and if you find from the
769 evidence the darkness of the night, the rate of speed, or any other danger of navigation, required that a lookout on the deck or roof

of said steamboat America was necessary and prudent, and if you find that without such lookout there was danger of collision, and collision did follow thereby, then the defendants were, in such case, guilty of negligence, if you find said boat had no such lookout at the time.

Given, and excepted to by defts.

LINCOLN & WALKER, *Defts.' Atty's.*

29. The opinions of experts are given in evidence, not necessarily to control you, but to be considered with other evidence in a case, and if, from all the evidence in the case, you find a fact or facts to exist contrary or different from the opinions of experts, you have a right to so find, and reject the opinion of experts.

Given, and excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

30. It is for you exclusively to find what credit you ought to give to witnesses in determining whether you will believe all or any part of the testimony of a witness or witnesses; you may consider their interest, if any, in the case, his or their manner on the witness-stand, and
770 the influence, if any, either has over the witness, and any other matter that you may find from the evidence in the case affects his or their credibility.

If from the evidence you think you ought to do so, you may believe a part of a witnesses' testimony and disregard a part or believe all or reject all of a witnesses' testimony. These matters are exclusively for you upon all the evidence in the case.

Given, & excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

31. The admission by plaintiff that Robert Nelson would swear, if present, to certain matters, does not make his statement true. The plaintiff may show they are not true; and if you find from the evidence that they are incorrect, you may reject them just as if he had been examined in open court, for they do not bind the plaintiff, as he only admitted Nelson would swear to these matters, and did not admit that they were true, and was not required by law to admit the facts true.

Given, & excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

HARRINGTON & KIRBLY.

771 And the court gave said charges, to which defendant excepted.

And the defendant asked the court to give to the jury the following instructions, to wit: 1st, 4th, 5th, 6th, 7th, 7½th, 8th, 9th, 10th, 16th, 17th, and 20th to 27th, inclusive.

Instructions asked for by defts., and refused.

CHARLES ALLING, ADMR., &C., }
THOMAS SHIRLOCK ET AL. }

The defen'ants ask the court to instruct the jury—

1st. The complain't alleges, in the first and second paragraphs of his complaint, that Otis B. Sappington, of whom he is administrator, came to his death by the negligence and want of care of the defendants' em-

ployees in navigating their steamer United States, on which it is also alleged that Sappington was passenger, and that they carried coal-oil as freight; and in the 3rd paragraph of the complaint, that he came to his death by the negligence and want of care of defendants' employees in navigating their steamer America; and in the 4th paragraph
772 that he came to his death by the negligence of said employees in navigating both boats. These allegations are denied by the answer, and the plaintiff, to recover, must prove his allegations in some one of said paragraphs to be true by a preponderance of the evidence.

Refused, being given in general charge, and exc'pted to by defts.

LINCOLN, WALKER & ALLISON, *Defts'. Attys.*

4th. The defendants have answered that the alleged negligence and want of care, which it *is* claims constitutes wrongful acts and omissions within the statute, took place outside of low-water mark of the Ohio River, on the Indiana side, and on said river, within the territorial limits of the State of Kentucky; and that said State of Kentucky has enacted a statute on the same subject, which is set out in the answer. To this it is replied that the collision of the boats from which resulted the intestat*or*'s death took place north of the centre of the Ohio River, and that the force of the collision, momentum of the boats, and action of the winds brought the boat within low-water mark of the Ohio
773 River, on the Indiana side, when intestate died in Indiana. If you believe, from the evidence, that defendants' employees guilty of negligence in navigating and managing their steamer United States, which caused her to collide with defendants' steamboat America, and thereby caused the steamer United States to burn up and sink; and that such negligence and collision occurred outside the low-water mark on the Indiana side of the Ohio River; and that in the effort to save the passengers and boat she was, by defendants' employees, brought within low-water mark on the Indiana side of the river, where plaintiff intestate died, you must find for the defendants.

Refused, and excepted to by defts.

LINCOLN, WALKER & ALLISON, *Defts.' Attys.*

5th. If you believe, from the evidence, that the alleged collision and destruction of said steamers was caused by negligence, and that the negligent collision and death were beyond and outside of low-water mark on the north bank of said river, you must find for defendants.

Refused, & excepted to by defts.

LINCOLN & WALKER, *for Defts.*

6th. If you believe, from the evidence, that the alleged collision
774 between said steamers was caused by the negligence of defendants' employees, and that the collision and negligence occurred outside of low-water mark on the Indiana side of said river, you must find for defendants, no matter where deceased died.

Refused, & excepted to by defts.

LINCOLN & WALKER, *for Defts.*

7th. The plaintiff alleges in each paragraph of his complaint that his intestate died in Indiana, and inside of low-water mark. You must, therefore, be able to find from a preponderance of the evidence that he did die on the inside of low-water mark on the Indiana side of the river, or you must find for the defendants.

Refused, & excepted to by defts.

LINCOLN & WALKER, *for Defts.*

7½. If you should find that there was negligence, which caused said collision and death, you must also find with which boat's crew, that of the steamer United States or America, or in both, did negligence occur.

Refused, & excepted to by defts.

LINCOLN & WALKER, *for Defts.*

8th. It requires a greater degree of negligence to make the defendants liable in this action on the part of the crew of the America than it does on the part of the crew of the United States, if deceased
775 was a passenger on the United States, though both boats belonged to the defendant, because the defendants owned not duty as carriers of passengers to deceased in respect to their employees on the steamer America, if the was a passenger on the United States.

Refused, and excepted to by defts.

LINCOLN & WALKER, *for Defts.*

9th. As to what constitutes negligence in this case, I say to you that if deceased was a passenger on defendants' steamer United States, they were bound to use all such care and skill to carry him safely as is generally and ordinarily used and exercised by the carriers of passengers on steamboats on the western rivers; they are not insurers, and bound at all events to carry safely. If they employ persons to navigate their boats as captains, pilots, engineers, and other officers, and men who profess such skill in their respective positions, on said boats, as is commonly and ordinarily professed by persons in that particular business, and those employees exercise in navigating the boat such care and skill as I have stated they should profess, then the defendants are not liable to injuries to passengers or for their death in such carriage. This
776 is in respect to defendants' employees upon the steamer on which the deceased was a passenger.

Refused, & excepted by defts.

LINCOLN & WALKER, *For Defts.*

10th. In respect to the degree of negligence on the part of the defendants' employees on another steamer, and on which the deceased was not a passenger, I say that defendants were bound, through their employees, in respect to deceased, common, ordinary care, and skill, and prudence, only as every man is bound to observe in the use of his own property, and exercise his own right not to use the one and exercise the other in such a careless, negligent, or unskil'ful manner as to injure another.

Refused, & excepted to by defts.

LINCOLN & WALKER, *For Defts.*

16th. There is a distinction in law between a mere mistake or error in judgment and negligence and want of due care. There may be an error of judgment and at the same time an exercise of due care, the two things not being always and necessarily the same.

Refused, and excepted to by defts.

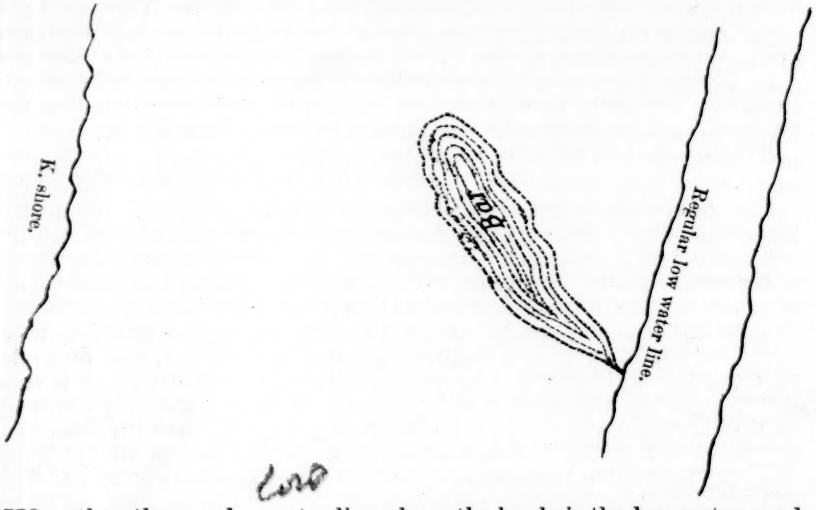
LINCOLN & WALKER, *For Defts.*

17. The negligence and omission spoken of in the statute is the want of that ordinary care and skill which prudent boatmen generally
777 exercise in their own business and calling under like circumstances, and not the highest degree of care and skill of the most prudent and careful men, but the highest degree of care of men of ordinary care and skill in the same employment.

Refused, & excepted to by defts.

LINCOLN & WALKER, *F'r Defts.*

20. We ask the court to charge the jury that if at and opposite the point of the collision on the Indiana shore there is a regular line of low-water mark along that bank, and that there was a very slight rise in the bottom of the river, or bar making out from the regular line of low water, and which is only dry at times of very low water, and which always has a line of water inside of it except at the low, narrow point at the head, where it is connected with the shore, thus:



778 then the regular water-line along the bank is the low-water mark on the Indiana shore and the boundary of the State of Indiana, and not the outside line of said bar.

Refused, & excepted to by defts.

LINCOLN & WALKER, *For Defts.*

LINCOLN, WALKER,
ALLISON & JOHNSTON,
Counsel.

21st. We ask the court to charge the jury that if there was any carelessness of the defendants shown in this case that led to or caused the death of the plaintiff intestate, yet if that carelessness took place out from the Indiana shore beyond low-water mark, then the plaintiff is not entitled to recover.

Refused, & excepted to by defts.

LINCOLN & WALKER, *For Defts.*

22nd. That if there was carelessness of the agents of the defendant shown in this case to the satisfaction of the jury, which led to the death of the plaintiff intestate, and that carelessness took place out from the Indiana shore beyond low-water mark, then the plaintiff cannot recover, even if it be shown that the plaintiff intestate died within the State of Indiana.

Refused, & excepted to by defts.

LINCOLN & WALKER, *For Defts.*

779 23. That if there was carelessness of the agents of the defendants which led to or cause' the death of the plaintiff intestate,

and such carelessness took place out from the Indiana shore beyond low-water mark, and that there was at the time in force and act of the State of Kentucky providing for damages in case of death from negligence, such as is set up in the second paragraph of the answer, and which requires the suit to be prosecuted within one year from the time of such carelessness, then the plaintiff cannot recover in this action.

Refused, & excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

24. That if there was carelessness of the defendants, causing the death of the plaintiff intestate, shown to the satisfaction of the jury in this case, and even if it be shown that the place where the said carelessness occurred within the State of Indiana, yet if it be also shown that the carelessness and death happened in the Ohio River away from the Indiana shore, south of low-water line, yet the boat was taken north in order to save the boat, cargo, and passengers, and at a point navigable for such boats at the time, and if the fact set up in the third par-
780 agraph of the answer be proven, then the plaintiff cannot recover.

Refused, & excepted to by defts.

LINCOLN & WALKER, *Defts.' Attys.*

25th. That if there was carelessness of the agents of the defendants shown in this case, and such carelessness caused the death of the plaintiff intestate, and happened out from the Indiana shore beyond low-water mark, and such carelessness put the steamer United States, her cargo, and passengers in peril, and in order to save such passengers and relieve them from peril the officers in charge of said boat, being competent, in good faith used their best efforts to get the said passengers ashore, and in so doing directed the boat towards the Indiana shore, and by the use of her machinery and wheels she was forced towards the Indiana shore to a point navigable and away from the shore, yet above low-water mark, when she sunk, and thereby the plaintiff intestate came to his death in Indiana, the plaintiff is not entitled to recover.

Refused, & excepted to by defts.

LINCOLN AND WALKER, *Defts.' Attys.*

26. That if the jury find that the collision and carelessness in this case, if any there was, took place out from the Indiana shore, and that
781 the boat was at the time, and when she sunk and Sappington died, at a navigable point for such boats as the United States and America, and not at the shore; and they also find that the said steamers were regularly inspected by the United States inspector, whose duty it was to inspect such boats within one year of the time of the said collision and death; and they also find the facts set up in the third paragraph of the defense, then they must find for the defendants, even if they should find that the boat sunk and Sappington died between low-water mark and the Indiana shore.

Refused, and excepted to by defts.

LINCOLN & WALKER, *For Defts.*

T. D. LINCOLN, *of Counsel.*

27. We ask the court to charge the jury that the south boundary-line of the State of Indiana is low-water mark of the north bank of the Ohio River, and that the territorial limits of the State do not extend to the

center thread of the stream and beyond low-water mark, and that proof of negligence of those in charge of the steamboats United States and America, one or both of them, causing the death of Sappington on
782 the river at a point between the said low-water mark of said river and the center thread of the stream, will not authorize the jury in finding a verdict for the plaintiff.

Refused, & excepted to by defts.

LINCOLN & WALKER, *For Defts.*

Which instructions the court refused to give to the jury; to which ruling of the court defendants excepted.

LINCOLN, WALKER AND ALLISON,
For Defts.

Instructions asked for by defendants, & given.

And the court gave the following charges to the jury, asked by the defendants, to wit, the 2d, 3d, 11th, 12th, 14th, and 19th, which were given as follows:

2d. This action is founded upon a statute, and but for the statute it could not be maintained at all. For an injury resulting in death, the statute gives to the administrator of one who is killed by the wrongful act or omissions of another and action for damages for the wrongful act or omission causing the death, if the deceased could have maintained an action for the same injury had he lived; they can therefore be
783 no recovery by the plaintiff in such an action as this without affirmative proof on his part that defendants did do an act which was wrongful for them to do, or did omit some act which was wrongful for them to omit, and which act or omission caused the death. It is not enough for the plaintiff to prove that his intestate was a passenger on defendants' steamer, and that he was killed, or received an injury resulting in death; there must be something more than this proved, to wit, a wrongful act or a wrongful omission.

3rd. The defendants, as carriers, are not insurers of the safety and lives of their passengers, but they are required to exercise care and skill to carry them safely. It is only, however, from a failure to exercise due care and skill and prudence to carry safely that they can be charged with having committed a wrongful act or with a wrongful omission.

11th. The only negligence charged in the complaint in this case is in respect to the navigation of the boats in running at to' great a rate of speed, in giving improper signals, or not giving proper signals,
784 and in carrying coal-oil as freight, and the want of a lookout on the America. There is no charge of any defects in the boats, or their machinery, or of any deficiencies in the officers and crews, or that any of the officers and crew did not possess the requisite skill to fill their several positions, or that the deceased lost his life from the want of any care, skill, or exertions on the part of any officer or hand on either boat to save his life, or the life of any other passenger, after the collision occurred, and therefore you must not trouble yourself about these matters—about what was done after the collision occurred to save life—further than to determine the questions, first, whether *whether* the deceased died inside of low-water mark of the river on the Indiana side; and (2) second, if inside such low-water mark, whether the boat came inside by the main force and momentum of the collision, or by the action of the officers and crew in endeavoring to get her nearer shore.

The questions raised by the pleadings being only whether or
785 not the boats, or either of them, was navigated so negligently as to cause the collision, and, together with the coal-oil and the want of a lookout on the America, the burning of the boats, and the consequent loss of the life of the plaintiff's intestate, you need not and should not inquire about the loss of any other person's life.

12th. As to the alleged negligence in carrying coal-oil as freight on the United States, if you believe from the evidence that the steamer had a license from the United States authorities to carry coal-oil, and that coal-oil was a usual cargo prior to that time in her trade, and that it was properly stored on that part of the boat where by the license it might be stored, with due care to safety, then there was no negligence in the carrying of the coal-oil; the license would protect the owners from a charge of negligence for the mere carrying of coal-oil if the priviledge to carry it was duly observed as to the place and manner of storing.

14th. If you find for the plaintiff, you must assess his damages.
786 In assessing damages you cannot go beyond five thousand dollars, as the statute limits the damages to that sum. You are to assess damages in view of the whole case. You cannot give any damages on account of the particular manner in which the deceased came to his death; nothing for his pain and suffering, and nothing for any mental anguish or pain of the wife or children of the deceased. You are charged *in* by the statute to give damages only as a pecuniary compensation for the actual present as well as prospective loss which the widow and children sustained in consequence of his death. In determining this you take into consideration the age, health, and habits of the deceased, &c., &c. But as life and death *or* uncertain, you are not to fix a determinate probable leng*ht* of life, and then fix a sum that would yield a life annuity which would yield a probable annual earnings. The damages are to be a gross sum, and such only as you shall think, under all the circumstauces, to be just and reasonable, such as the defend-
787 ants ought to pay, and the widow and children should in justice have from them; but in no case can you assess damages as an example or as a punishment on the defendants.

19th. In determining where the collision took place, you are to consider all the evidence in the case on that point, whether the collision took place opposite a shore-bar on the Indiana side, on it, or above; it you should also in this connection take into consideration the speed of the water itself in determining whether the collision was opposite or above the place where the boat sunk.

LINCOLN, WALKER, AND ALLISON,
For Defts.

And the defendants asked the court to give charges No. 13th, 15th, and 18th, but the court modified them by adding the words enclosed in the brackets, and then gave them as follows:

"13th. With respect to the alleged negligence in navigating the boats, you must determine from all the evidence in the case whether or
788 not due and proper care and skill was exercised in giving signals. As to this you will consider whether under the circumstances of this case something should not be left to the judgment and discretion of the pilots on watch, [as I have explained to you under what circumstances the rules of navigation may be departed from.]

"15th. The burden of making out the material facts of carelessness causing the death of Sappington is upon the plaintiff, and does not

change in any progress of the case [except as the United States giving the first signal, if she did do so, as I have before explained to you."]

Given with modifications in brackets. Modification excepted to by defts.

LINCOLN & WALKER,
For Defts.

"18th. It is not charged in the complaint in this action that the steamers United States and America had not on board a sufficient number of hands or officers, [except a lookout on the steamboat America,] or that those hands or officers were incompetent or unskillful in their respective lines of duty. The charge is that the boats were negligently and
789 carelessly navigated by the hands and officers then on board, and in carrying coal-oil on the States. You are not, therefore, required to enquire whether or not there was not a sufficient number of hands or officers (except as to a lookout on the steamboat America) on either boat, or whether they were skillful or not, but only whether or not those hands and officers then on board exercised due and proper care and skill in navigating the said boats."

LINCOLN, WALKER AND ALLISON,
For Defts.

And the court gave to the jury the following, to the giving of which the defendants excepted, to wit:

Instructions given by the court.

CHARLES ALLING, ADMR. OF OTIS B. SAPPINGTON, dec'd,
vs.
THOMAS SHERLOCK, MOSES ANDREW, AND others.

790 GENTLEMEN OF THE JURY: This action is brought by the plf. for the alleged wrongful act or omission of the defts., their agents, servants, and employees, resulting in the death of the said Sappington.

The first paragraph of the complaint alleges that the defts. are the owners of a line of steamboats navigating the Ohio River, between Cincinnati, Ohio, and Louisville, Kentucky, for the purpose of carrying passengers, freight, and the United States mail, and that they were running and navigating on said line the steamboats United States and America, and that the deceased, on the 4th of December, 1868, took passage on the steamboat United States at Cincinnati aforesaid, to Madison, Indiana, and paid to the defts. his passage-money, and in consideration of which the defts. undertook to safely carry the deceased to Madison aforesaid, and that the defendants, servants, and officers in charge of the United States, so negligent and carelessly navigated, steered, and managed said steamboat, that she collided with and against the defendant's steamboat America, which the defendants were navigating on said river from Louisville to Cincinnati,
791 aforesaid, on the night of said 4th of December, 1868, and in this county, and within the territorial jurisdiction of this State, above the line of low-water mark, and by such collision the hull of the United States was broken in and the Un'ted States set on fire by the fire and lights on said boats, and was burned and destroyed, and the deceased, who was at the time a resident, of Jefferson County, in this State, and

domiciled therein, was, without any fault or negligence on his part, suffocated and burned to death, and that the pilot of the United States, whose duty it was at the time to navigate and steer said steamboat, ran and navigated said steamboat at a rate of speed exceeding eighteen miles an hour down stream at the time he saw the America approaching at a similar rate of speed, and in the night-time, when it was dark, cloudy, raining, and snowing, and did not slacken the speed of the United States or give any signal of alarm or danger until it was too late to avoid the collision, although he, at the time, had notice of the approach of the America, and saw her fires and signal-lights when
792 she and the United States were two miles apart from each other, and that said pilot first gave a signal with the steam-whistle of the United States for the choice of sides of the river for passing the America, when, by the rules prescribed according to an act of Congress of the United States, it was the duty and privilege of the America to first take the choice of sides to pass the United States, and that, in consequence of the negligence of the pilot of the United States first giving said signal, and from other causes, there was a misunderstanding in the signals between the pilots of the said boats in regard to passing each other; and the said pilot of the United States, instead of signaling distress or alarm, or slacking the speed of the United States, recklessly persisted in navigating the United States at said high rate of speed until said steamboats were within less than hundred yards of each other, and until it was too late to check the speed or turn aside to avoid the collision, although it was his duty to stop the engines of said boat and arrest its speed by backing said engines of the same, and to give a signal of alarm, indicated by short, quick, successive whistles before said boats approached each other nearer than eight hundred
793 yards; that the deceased left surviving him a widow, Sarah Sappington, Charles, Mary C., and Ottis B. Sappington. The second paragraph of the complaint alleges the facts nearly the same as they are alleged in the first paragraph, but, in addition to the allegations of the first paragraph, it is alleged that the pilot of the United States, instead of signaling distress or alarm, or slacking the speed of the boat, neglected, and recklessly persisted in navigating said boat at a rate of speed from 16 to 18 miles an hour until within less than 400 yards of the America, and until it was too late to check the speed or turn aside to avoid the collison, and that the night was dark and cloudy, and called by the navigators of said river a gray night, and on which it is difficult to distinguish how far distant an approaching steamboat is, and when approaching objects appear to be further away than they really are, and on which the human eye is liable to be deceived, and in consequence of its being a gray night, and a high wind blowing up stream, and
794 in navigating said United States at said high rate of speed, the pilot of the United States approached too near the America—nearer than 800 yards—to exchange signals with the pilot of the America for the passage of the two boats, in consequence of which the collision took place, and the deceased came to his death.

In addition to the allegation in the first paragraph of the complaint—the second paragraph—that the defendants' servants, pilots, captains, mates, and other officers and persons in command and in charge of defendant's steamboat America were, on the night of said collision, grossly negligent, and, by their negligence in navigating and steering of the America, she collided with the United States, and caused the latter to be burned, and thereby the deceased came to his death; and that they were negligent among other things, in this, that the captain of

the America was standing on the hurricane-deck aft of the chimneys, on the America, at the time when she was approaching the United States, and when the America signaled the United States for choice of sides by sounding twice with the steam-whistle to keep to the left, and
795 that he heard but one sound from the steam-whistle of the United States in reply, which meant keep to the right, instead of too the left, and negligently and carelessly permitted the America to be navigated at the high rate of speed of from twelve to fourteen miles an hour, and did not communicate with the pilot of the America in relation to the cross-signals, and that there was no lookout on the America forward of her chimneys, and the America, in consequence of the pilot of the United States signalling for the same side of the river which the pilot of the America had signalled for, the two boats, approaching at a rate of speed exceeding twenty miles an hour, collided; that the pilot of the America signalled the United States to keep to the left by blowing two whistles of the America and thereupon continued to approach the United States at the high rate of speed of fourteen miles an hour until he got within four hundred yards of the United States, at which distance it was too late, and impossible to avoid a collision by changing course or stopping and backing the engine, although he heard no
796 signal until the boats were within four hundred yards of each other, and that he continued to navigate the America at a high rate of speed, exceeding 12 miles an hour, at the time of approaching the United States on the night of the collision, in the center of the channel of said river, straight up stream, until the America came within five hundred yards of the United States, at which time he steered the America quartering across the river towards the Indiana shore, and towards the approaching steamboat United States, at the same time signalling the United States to keep to the left, when it was too late to change the course of either boat or stop and back either boat to avoid a collision, and by said unskillful and careless conduct of said pilot said collision occurred, and that the pilot of the America was grossly negligent in not signalling the pilot of the United States that the first signal of the America had not been answered, and in not slackening the speed or entirely stopping the America until he could get an answer to his signal for choice of sides.

797 The third paragraph alleges substantially the same state of facts, but in less detail as to the negligent and careless navigation and management of the United States, as is set forth in the first paragraph. The fourth paragraph alleges substantially the same state of facts, but in less detail as to the negligent and careless navigation and management of the steamers United States and America, as is set forth in the second paragraph.

To this complaint the defendants answered, first, by a general denial of all the allegations in the complaint. This general denial puts upon the plaintiff the burden of proving by a fair preponderance of the evidence enough of the material allegations of his complaint as will enable him to recover in this action. The defendants answer secondly that the injury complained of occurred on the Ohio River, about two miles above Warsaw, in the State of Kentucky, and in a part of the river between the Kentucky shore and low-water mark on the Indiana side of the river, and within the limits of the State of Kentucky,
798 and wholly outside of the State of Indiana, and the answer set forth an act of the legislature of the State of Kentucky, which provides that if the life of any person is lost or destroyed by the willful neglect of another person or persons, company or companies, corpo-

ration or corporations, their agents or servants, the personal representatives of the deceased may sue and recover primitive damages for the loss and destruction of the life aforesaid, and that the action must be commenced within one year from such death, and that, prior to the passage of this act, aside from its provisions, there was no liability in said State for damages or loss resulting from death or injuries resulting in death, and that there was no liability within said State for the cause of action set up in the complaint, and that this action was not commenced within one year next after the alleged injury.

The defendants answer, thirdly, that the court has no jurisdiction over the subject-matter of this action, because the negligent act com-
799 plained of by the plaintiff as causing the death of the said Otis B. Sappington were done, took place, and occurred within the State of Kentucky and not within the State of Indiana.

To these special defenses the plaintiff replies, first, that, at the time set out in the complaint, the defendants' steamboat, United States, was descending the Ohio River above Warsaw, and that the defendants' steamer America was at said time ascending said river, and that said steamboats were on said river, and opposite and adjacent to the shores of said river, in the county of Switzerland, and by the carelessness of the defendants and their agents and employees on said steamboats, they did collide, and run upon and against each other, and that said collision, negligence, and first contact of the steamers aforesaid occurred twenty yards on the north and Indiana side of the centre and t'read of the stream of the Ohio River aforesaid, and ten feet below low-water mark, on the Indiana side of said river, and that at the said time of the contact the bow of the United States was quartering past the bow of
800 the America, and nearer the Indiana shore than the bow of the America, and that the America struck the larboard or Kentucky and outer side of the United States, and broke in her hull, and by the force of said contact did cause the United States to swing around with her bow up stream and did set her on fire, and by the power and momentum of said collision, and by reason thereof, the United States was thrown and forced, and did pass, thirty yards clear of and above low-water mark on the Indiana side, and in the county of Switzerland, at which point in said county she sunk to the bottom; and that after the United States, by means of said collision, had been forced and driven above low-water mark on the Indiana side of said river, and into the county of Switzerland, the fire and flames ignited on said United States by said collision, and while said boat was above low-water mark in said county of Switzerland, did reach to and burn the deceased, above low-water mark, without any fault of the deceased, did burn him to
801 death, and that he then and there died upon the United States, thirty feet above low-water mark, in the county of Switzerland.

The plaintiff replies, secondly, that the collision of the steamboats United States and America took place, and said steamboats came into forcible contact above Warsaw, and north of the thread and center of the Ohio River, that is, between the thread and center of said river and the Indiana shore of said river, and thirty feet nearer the shore of said river in Switzerland County in Indiana that the thread and center of the said river is and was, and all the injuries to the deceased were given, and his death was caused and took place, more than thirty feet nearer the Indiana shore, in the said county of Switzerland, than the center and thread of said river, and above the said thread of the said river on the Indiana side, and that said negligence, injuries, and death took place in

said county of Switzerland, and in the State of Indiana and jurisdiction of the State of Indiana.

You will perceive that the first reply of the plaintiff to the
802 defendants' special answer alleges that the collision, negligence, and first contact of said steamboats occurred on the north and Indiana side of the thread and center of the river, and that at the time of the contact and collision the bow of the United States was quartering past the bow of the America, and that the bow of the America struck the larboard or Kentucky side of the United States, broke into her hull, and by the force of the collision and contact caused the United States to swing around with her bow up stream, and set her on fire, and by the power and momentum of the collision, and by reason of it, the United States was thrown and forced and did pass thirty yards clear and above low-water mark on the Indiana side of the river, and that it was there that the fire and flames ignited the boat, set on fire and burned, and that the deceased was burned to death without any fault on his part.

And by the second reply to the same answer it is alleged that
803 the collision and forcible contact of said boats took place north of the thread or center of the Ohio River, and between it and the Indiana shore of said river, and that all the injuries to the deceased were given, and his death took place, more than thirty feet nearer to the Indiana shore than the thread or center of said river, and that said negligence, injuries, and death took place in this county and State, and within the jurisdiction of the State. Here it is not alleged that the death took place on the Indiana shore thirty yards above low-water mark on this side of the river, but more than thirty feet nearer the Indiana shore than the center or thread of the stream.

We have a statute in this State which provides that when the death of one person is caused by the wrongful acts or omissions of another person, the personal representatives of the deceased person may maintain an action therefor against the person causing the death by the wrongful act or omission, if the deceased person might have maintained an action, had he lived, against the person causing the death
804 *for an* injury for the same act or omission.

Two things are indispensably necessary to enable the plaintiff to maintain this action. There must have been a wrongful act or omission on the part of the defendants, their agents, servants, or employees, from which the death of Otis B. Sappington must have ensued; neither is it sufficient of itself, but both must concur. A wrongful act or omission without death ensuing therefrom will not authorize the plaintiff to recover in this action, because it would involve no breach of duty. Death without the wrongful act or omission will not authorize the plaintiff to recover in this action. because it would be a damage without an injury; any damage that may be recovered in this action is for the exclusive benefit of the widow and children of the deceased, if the evidence shows that he left any surviving him.

The wrongful act or omission spoken of in the statute before referred to means negligence. Negligence consists in doing something that a reasonable man would not do, or in the omitting to do something
805 that a reasonable man would do, and in either causing unintentional mischief or injury to another party.

The statute which gives the right of action for the negligence charged in the complaint, can have no force for any wrongful act or omission or negligence committed and injury caused thereby, which occurred outside of the territorial jurisdiction of this State.

It is admitted by the defendants that they were the owners of the steamers United States and America. You will inquire whether the testimony proved that the deceased was a passenger on the defendants' steamboat United States about the 4th of December, 1868, on her trip from Cincinnati, Ohio, to Louisville, Kentucky; and, if so, does the testimony prove that she collided with the defendants' steamboat America, at any time during said trip; if so, does the testimony prove that the collision occurred through the negligence of the defendants, their agents, servants, or employees navigating & managing said steamboats, or either of them; and, if so, does the evidence prove that either one or both of said steamboats were in whole or in part destroyed by
806 fire ignited by, and in consequence of, such collision; and, if so, does the testimony prove that the deceased lost his life by the collision, or that he was suffocated, or burned to death by the fire; caused by and in consequence of the collision, without any fault on his part; and, if so, does the testimony prove that the negligence which caused the collsion, the collision and fires consequent thereon, and the death of the deceased, all occurred outside of the territorial limits of this State; or does the testimony prove that the negligence which caused the collision, and the fire consequent thereon, and the collision and fire, occurred inside of the territorial limits of this State, and that the steamboat United States, by the momentum of said boats and the force of the collision, was driven and forced within the territorial limits of this State, and thirty feet above low-water mark on this side of the river, and that there the death of the deceased occurred, or does the testimony prove that the negligence that caused the collision and the fire caused thereby, and the collision, and fire, and death of the
807 deceased, all occurred between the Indiana shore of said river and the center or thread of said river, and thirty feet nearer the Indiana shore of said river than the center and thread of said river.

The territorial limits of this State on the southeast is low-water mark on this side of the Ohio River, or where the water meets the land at its lowest stage, but the State has concurrent jurisdiction with the State of Kentucky, for the enforcement of civil and criminal laws over said river, as far as the same forms the boundary of this State. If you find from the evidence that the deceased was a passenger on the defendants' steamboat United States, as charged in the complaint, and that she collided with the defendants' steamboat America, and that said collision occurred through the negligence of the defendants, their agents, servants, or employees who were at the time navigating and managing said steamers, or either of them, or that the United States was set on fire by and in consequence of such collision, and that said collision and negligence occurred outside or below low-water mark on this side of the
808 river, and by the momentum of the boats at the time the negligence occurred, and by the force of the collision the United States was forced and driven above low-water mark on this side of the river, and there the deceased lost his life without any fault of his own, and in consequence of injuries received by the collision, or by being suffocated or burned to death by such fire, and that the deceased left a wife and three children surviving him, alleged in the complaint, then you should find for the plaintiff.

This part of the charge especialley excepted to. LINCOLN & WALKER, *For Defts.*

This part of charge excepted to by defts. LINCOLN & WALKER, *For Defts.*

If you find from the evidence that the deceased was a passenger on board the defendants' steamboat United States, as alleged in the complaint, and that she collided with the defendants' steamboat America,

and that the said collision occurred through the neglegence of the defendants, their agents, servants, or employees who were at the time navigating and managing said steamboats, or either of them, and that the United States was set on fire by and in consequence of such collision, and that said neglegence and collision occurred north of the center or thread
809 of the Ohio River, and between that and the Indiana shore of said river, and that all the injuries to the deceased by the collision or by the fire oc'asioned by or in consequence of the collision were given, and his death took place more than thirty feet nearer the Indiana shore than the center or thread of the river, and that he there lost his life without any fault of his own, and in consequence of injuries received by the collision, or by being burned or suffocated by such fire, and that the deceased left surviving him a wife and three children, as charged in the complaint, then you should find for the plaintiff.

This part excepted to by defts. LINCOLN & WALKER, *For Defts.*

And if you find from the evidence that the deceased was not a passenger on the defendants' steamboat United States as charged, or that she did not collide with the America at all, or, if she did so collide, and in consequence of the collision was set on fire and destroyed, and that the deceased was not killed, or suffocated, or burned to death by such fire ; or if you find that he was killed, or suffocated, or burned to death by such fire, without any fault of his own; if you further find from
810 the evidence that the collision and the fire occasioned thereby did not occur through the neglegence of the defendants, their agents, servants, or employees, you should find for the defendants.

If you find from the evidence that the defendants' steamboats United States and America collided, and that in consequence of such collision the United States was set on fire and destroyed, and that such collision and fire occasioned thereby occurred through the neglegence of the defendants, their agents, servants, and employees, and that the deceased lost his life by the collision, or was suffocated or burned to death by the fire, if by his own negligence or want of ordinary care he immediately contributed to his own death, the plaintiff cannot recover in this action, unless you find from the evidence that the neglegence of the defendants, their agents, servants, and employees, in the navigation and management of said boats, was so gross as to amount to a willingness to inflict the injury.

In determining whether the deceased immediately contributed
811 to his own death, there need not be any direct proof or evidence on the point, but you should look to all the circumstances surrounding the case.

If there is any evidence as to the negligence on the part of the defendants, their agents, servants, or employees, in navigating and managing said boats, or either of them; as to the *d*uddenness of the danger or character of the night, the force of the collision, the rapidity with which the flames spread, the character of the disa'ter, and its extent; the position of the deceased when found, whether upon or near the wreck of the United States, the condition of the body, and the injuries it had sustained—all this evidence you should consider, as well as all the other evidence in the cause, in coming to the conclusion as to whether the deceased was without fault, or immediately contributed to his own death. In calling your attention to the evidence on these points, if there is any evidence in relation to them, I do not wish or intend to direct your attention from every other fact proved by the evidence bearing upon the question.

From these facts and circumstances, if there is any evidence in

812 relation to them, and the interest of self-preservation of all mankind, you may, in the absence of direct proof to the contrary, find that the deceased was not guilty of such negligence, fault, or want of ordinary care as will prevent the plaintiff from recovering in this action, and that he did not directly contribute to his own death.

If you find from the evidence or the admissions of the defendants that they were the owners of the steamboats United States and America, and that they were engaged in carrying passengers on said boats for hire, then the laws impose upon them, their agents, servants, and employees, the duty of exercising the highest degree of care in the navigation and management of their boats, but they are not insurers of and bound to carry their passengers safely at all events.

This part of the charge as to degree of care excepted to by defts. LINCOLN & WALKER, *For Defts.*

The board of supervising inspectors have adopted rules for the government of pilots, pursuant to the steamboat law of 1852. The act of Congress confers on this board ample authority to adopt such rules, and they are obligatory in all cases to which they fairly apply.

813 When steamboats are approaching each other, the signal for passing each other shall be one sound of the whistle to keep to the right, and two sounds of the whistle to keep to the left. These signals are to be made first by the ascending steamer; but if the dangers of navigation, darkness of the night, narrowness of the channel, or any other cause render it necessary for the descending boat to take the other side than that indicated by the signal of the ascending boat, she does so by making the necessary signals, and the ascending steamer must govern herself accordingly. When steamers are likely to pass nearer each other, and these signals should not be made and answered by the time the boats shall have arrived at the distance of eight hundred yards of each other, the engines of both boats should be stopped, and if the signals are given and not understood properly for any cause, both boats should be backed until their headway be fully checked, and their engines not started forward until the proper signals have been made, answered, and understood.

814 These rules require the ascending boat to signal first; but if, from any danger of navigation, darkness of the night, narrowness of the channel, or any other cause, the descending boat cannot take the side indicated by the signal of the ascending boat, she may signal for the other side, and the ascending boat must govern herself accordingly.

This charge on subject of signals excepted to by defts. LINCOLN & WALKER, *For Defts.*

These rules require the ascending boat to signal first, and do not leave it to the discretion of pilots in this particular; and the object in requiring the ascending boat to signal first, which is, to avoid confusion which might arise if either pilot might signal first, at his discretion. There are no doubt circumstances that would render it proper for the descending boat to signal first, but there must be some palpable necessity for it, involving the safe navigation and security of the descending boat; and a violation of the rule in this respect, resulting in disaster, raises a presumption of culpability which can only be removed by proof that the collision is attributable to some other cause.

815 If you find from the evidence that there was a collision between the defendants' steamboats United States and America, and that the United States was the descending boat and the America was the ascending boat, and that the United States first signalled to pass, and that there was a collision between said boats, and that the deceased was a passenger on the United States, and that in consequence of such

This part of charge excepted to by defts. LINCOLN & WALKER, *For Defts.*

collision the United States was set on fire and burned; or that the deceased lost his life by the collision, or was suffocated or burned to death by the fire occasioned by such collision, then the burden of the proof is upon the defendants to show that there was some necessity for the United States giving the first signal; that the navigation at that point was dangerous; that the darkness of the night, the narrowness of the channel, the close and dangerous proximity of the boats, or some other cause which rendered it necessary that the signal should be given, and the rules of navigation departed from.

If you find from the evidence that there was a collision between
816 the defendants' steamers United States and America, and that the United States was the descending boat, and that the America was the ascending boat, and that the America at the distance of a mile or more from the United States signalled the United States to pass, by two sounds of the steam-whistle, which meant to pass to the left, and United States answered by one sound of the steam-whistle, which meant pass to the right, and that neither the danger of the navigation, the darkness of the night, the narrowness of the channel, or any other cause rendered it necessary for the United States to pass to the right, this is evidence from which you may find that there was negligence on the part of the pilot of the United States.

This part of the charge as to negligence of signals excepted to by defts. LINCOLN & WALKER, *For Defts.*

If you find from the evidence that there was a collision between the defendants' boats United States and America, and that the United States was the descending boat and the America the ascending boat, and that the America, at the distance of a mile or more from the United
817 States signalled the United States to pass, by two sounds of the steam-whistle, which meant pass to the left, and that the pilot of the America did not hear any answering signal from the United States, and without hearing such answering signal, but on the supposition that the United States had properly answered it, continued to navigate his boat at a rate of speed twelve miles an hour, and did not again signal the United States until within four or six hundred yards of her, and did not stop and back engines and back until she got within four or five hundred yards of the United States, this is evidence from which you may find that there was negligence on the part of the pilot of the America.

This part of charge as to signals excepted to by defts. LINCOLN & WALKER, *For Defts.*

If you find from the evidence that there was a collision between the defendants' steamboats United States and America, that the United States was the descending boat and the America the ascending boat, and the America, at the distance of a mile or more from the United States, signalled her to pass, by two sounds of the steam-whistle, and that the captain heard the United States signal in answer to the signal of the America, one sound of the steam-whistle, but gave the pilot of the
818 America no notice that there had been a return cross-signal, and that the pilot of the America heard no signal from the United States in answer to his signal, but believed from the course of the United States that she had properly answered his signal and kept on his course until four or five hundred yards of the United States, and then again signalled by two sounds of the steam-whistle, and kept on his course or changed it further to the left until the United States answered by one sound of the steam-whistle and changed her course further to the right, and when said boats were within four or five hundred yards of each other they stopped their engines, reversed them, and backed until the collision

This part of charge as to speed and signals excepted to by defts LINCOLN & WALKER, *For Defts.*

took place, this is evidence from which you may find that there was negligence on the part of the pilots of both boats and captain of the America.

An ascending boat running at a great rate of speed, twelve or fourteen miles an hour, on a dark night, or a gray night, if the evidence shows that in such a night the distance that lights and other objects are
819 off is deceptive, and at a time when a descending boat is visible, and of whose course and distance she is doubtful, takes the risk of collision, she ought to slow or stop her engines until she is assured of the course and distance of the other boat.

Different definitions have been given of inevitable accidents on account of the different circumstances attending the collision, to which the rule has been applied; when the respective vessels are seen by each other, inevitable accidents, as applied to such a case, means a collision when both parties have endeavored, by all the means in their power, and with due care and caution and a proper display of nautical skill, to prevent the occurrance of the accident.

If you find from the evidence that the steamboats saw each other at the distance of a mile and a half apart, that defendants' agents, servants, and employees were navigating them at the time, and that such agents, servants, and employees endeavored, by all the means in their power, with due care and caution and a proper display of skill in the management of steamboats, were unable to prevent the occurrence of the accident, then you should
820 find for the defendants. If you find from the evidence that there was coal-oil as freight on board the United States at the time of the collision, and that such coal-oil was carried in the manner prescribed by the license given in evidence, then the carrying of such coal-oil was not negligence.

All this as to irresistable accident excepted to by defts. LINCOLN & WALKER, *For Defts.*

If you find from the evidence that the deceased was a passenger on the defendants' steamboat United States, and that the United States and the defendants' steamboat America collided, and the United States, in consequence of the collision, was set on fire and burned, and that the deceased was suffocated or burned to death by the fire occasioned by such collision, and that said boats were at the time being navigated by the defendants' agents, servants, and employees, and that said collision and burning of the United States, in consequence thereof, could have been avoided by ordinary care and prudence of the defendants' agents, servants, and employees, this is evidence from which you may find that there was negligence on the part of the defendants, their agents,
821 servants, & employees. In determining the question of negligence, you should take into consideration whether the rules for the navigation were observed by those in charge of the boats at the time, and manner in which the signals should be given, and they were not observed; whether there was any palpable necessity for their non-observance, the character of the night, the difficulties of navigation at that point, the speed with which the boats were running at the time, under all circumstances surrounding the case, and any other facts or circumstances bearing upon the question proved to you by the testimony.

By the preponderance of the evidence, I mean a greater weight of the evidence, and not simply a greater number of witnesses.

In reference to the measure of damages, in case you find for the plaintiff, there is no fixed rule by which they are to be determined; the' cannot exceed five thousand dollars, and they cannot be given by way of punishment or example; they must be compensatory simply, and it is the pecuniary damages simply that you can give. You cannot take

in account the suffering of the deceased, nor the grief and anguish
822 of his wife and children; but in fixing the damages you may take in consideration the age and health of the deceased, the business he was in, the amount realized from that business, and the business capacity of the deceased, the increase of wealth likely to accrue to a man of his age and means, and the care and education his children would have derived had he lived—if you find that pecuniary benefit would result from such care and education; but, after all, it must in a measure *it must* be left to your sound sense and judgment to give such sum as under all the circumstances you shall deem just and right.

You are the judges of what the evidence proves and what it does not prove, and it is not proper that I should say anything to you on this point; this you must determine for yourselves. You are also the judges of the weight you will give to the witnesses. You may believe the testimony of one witness and disbelieve the testimony of another witness, or you may believe a part of the testimony of a witness and disbelieve another part of the testimony, and if you believe that any
823 witness has knowingly sworn false in a material matter you may disregard the whole of his testimony, but you are not bound to do so; you may regard what you believe to be true and disregard what you believe to be false; you should weigh and consider all the testimony in the cause, and if there is any conflict in it you should reconcile it if you can, and make it stand together as a whole. If you cannot do this, then you will have to determine what of it you will believe and what of it you will disbelieve.

In determining what weight you will give the testimony of witnesses, you should take into consideration what interest they have in the event of this action, if any; what relation they bear to the parties, by blood or marrage, master and servant, employer and employee; their manner upon the witness-stand; the apparent firmness and candor with which they testify, the reasonableness of their testimony, the means and opportunities they have had to determine the truth of the facts about which they testify, the extent to which they are contradicted by the testimony of the other witnesses.

This action is one that involves important principles, and is of
824 deep and vital importance to the parties, and for the proper determination of which demands your careful and dispassionate consideration.

You will, if you find a general verdict, answer the interrogatories submitted to you.

If you find for the plaintiff, you will simply say: We, the jury, find for the plaintiff, and assess his damages at what you shall under all the circumstances think proper. You also answer the interrogatories. If you find for the defendants, you will simply say: We, the jury, find for the defendants; and also answer the interrogotries.

The foregoing charges given by the court and excepted to generally and specially by the defendants. The special parts excepted to are noted on the margin.

LINCOLN & WALKER,
For Defts.

Verdict.

And the jury returned into court the following verdict, to wit:
We, the jury, find for the plaintiff, and assess his damages

825, 826 in the sum of five thousand dollars, ($5,000.00.)
ALFRED SHAW, *Foreman.*

And in answer to interrogatories propounded to them, the jury return the following answers, viz:

1st. Did the steamboats United States and America collide above or below low-water mark on the Indiana side of the Ohio River?

Ans. Above low-water mark.

2nd. Did the said United States sink and burn up above low-water mark on the Indiana side of said river?

Ans. She did.

3rd. If the collision took place at or below the low-water mark on the Indiana side of the channel of said river, did the force of the collision and momentum of the boats coming into contact send
827 and cause the said steamboat United States to move above low-water mark on the Indiana side of the channel?

Ans. Yes.

4th. Did Otis B. Sappington, deceased, perish and die on said steamer above low-water mark on the Indiana side of the Ohio River, by reason of said collision and burning of said boats?

Ans. Yes.

5th. Did the collision between the steamboats United States and America occur on the Ohio River at a point in the river opposite the place where she sunk or at a point in the river further up-stream?

Ans. At a point near where the United States sunk.

6th. If the collision was at a point in the river further up-stream than where she lays sunk, how much further was it up the river?

828 Ans. Very near the point where the United States sunk.
ALRED SHAW, *Foreman.*

And thereupon the defendants moved the court for a new trial, and filed the following written reasons therefor.

Switzerland common pleas, March term, 1871.

Motion for a new trial.

CHARLES ALLING, ADMR.,
vs.
THOMAS SHERLOCK ET AL.

The defendants move the court to grant them a new trial herein, and assign as reasons therefor:

1st. The court erred in overruling defendant demurrer to plaintiff's complaint.

829 2nd. The court erred in suppressing the deposition of C. G. Pearce, defendant.

3rd. The court erred in overruling defendants' demurrer to the plaintiff's 1st and 2d paragraphs of reply.

4th. The court erred in sustaining plaintiff's demurrer to 1, 3, 4, 5, 6, & 7 paragraphs of answer.

5th. The court erred in striking out parts of defendants' 3rd paragraph of answer, and sustaining a demurrer to the residue.

6th. The court erred in striking out the 1, 4, 5, 6, & 7 paragraphs of defendants' answer.

7th. The court erred in excluding evidence offered by the defendants

and excepted to, and the court erred in admitting evidence offered by the plaintiff, and objected to by defendants, to which they excepted.

8th. The court in the instructions given by the court to the jury.

830 9th. The court erred in giving to the jury the charges asked by the plaintiff.

10th. The court erred in refusing to give to the jury asked by defendants, to all of which ruling the defendants excepted.

10½. The court erred in refusing to let C. G. Pearce testify when offered by defts.

11th. The verdict is not sustained by the evidence—is contrary to the evidence.

12th. The verdict is contrary to the law, and to law and evidence.

13th. The damages are excessive.

LINCOLN, WALKER AND ALLISON,
For Defts.

Which motion the court overruled, to which the defendants excepted, and the court rendered a judgment for the plaintiff on the verdict, to which the defendants excepted, and prayed an appeal to the

831 supreme court, which was granted on their entering into an appeal-bond in the sum of seven thousand dollars, with Ulysses P. Schenk and Robert A. Knox as security, within thirty days, and 70 days' time is given to file and prepare a general bill of exceptions; and said bond being filed within the time ordered, and the bill of exceptions being now prepared, is now signed as a true bill, and made part of the record in said case within said 70 days.

Signed & sealed May 22d, 1871.

SCOTT CARTER, *Judge.* [SEAL.]

STATE OF INDIANA,
Switzerland County, ss:

I, Alfred Rous, clerk of the Switzerland court of common pleas, do certify the foregoing to be a full, true, and complete transcript of all the proceedings had in said cause in said court, as the same now

832 appears from the records of said court, and the original papers now on file in my office.

In testimony whereof I have hereunto fixed my hand and affixed the seal of said court of Vevay, this 15th day of August, 1871.

[SEAL.] ALFRED ROUS,
Clerk S. C. C. P.

833 *Assignment of errors.*

Supreme court of Indiana, November term, 1871.

THOMAS SHERLOCK, ZACHARIAH M. SHIRLEY, Christy G. Pearce, Moses Andrew, Frank Carter, D. C. Benedict, Thomas Gaff, Patrick Rogers, William C. Hite, appellants,
vs.
CHARLES ALLING, ADMINISTRATOR OF OTIS B. Sappington, deceased, appellee.

Appeal from the Switzerland common pleas.

The said appellants assign the following errors in the foregoing transcript of record:

First. The court below erred in overruling the motion of appellants for a new trial, to which they excepted, (p. 737.)

834 Second. The court erred in overruling the demurrers of appellants to each of the paragraphs of plaintiff's complaint.

Third. The court erred in striking out the 4th part of the 3rd paragraph of defendants' answer, to which appellants excepted.

Fourth. The court erred in sustaining the plaintiff's demurrer to 1, 2, 3, 4, 5, 6, & 7 paragraphs of defendants' answer, to which they excepted.

Fifth. The court erred in suppressing the deposition of C. G. Pearce, and also in excluding said Pearce from testifying as a witness on defendants' behalf, to which they excepted.

Sixth. The court erred in admitting evidence offered by the plaintiff over the objection of defendants.

Seventh. The court erred in refusing to admit evidence offered by defendants, to all of which they excepted at the time.

Eighth. The court erred in the charges which it gave to the jury, and refusing to give the charges asked by defendants, to all of which they excepted at the time.

835 Nineth. Court erred in giving charges No. from 1 to 32, inclusive, asked by plaintiff below, and excepted to by defendants.

10th. The court erred in refusing to give the charges asked by the appellants from 1 to 34, inclusive, and excepted to by appellants.

(9th.) 11th. And there are other manifest errors in said record; wherefore they pray said cause be reversed.

LINCOLN, SMITH, WARNOCK, &
STEVENS & WALKER & ROBERTS,
For Appellants.

Joinder in error.

Comes now the appellee, and says there is no error in the record and proceedings of the court below in this cause.

HARRINGTON & KORBLY,
Appellee's Attys.

836 And at the same time a supersedeas was awarded in said cause, a certified copy of which was issued to the clerk of the Switzerlond common pleas court. Said order of supersedeas was in the words and figures following:

Supersedeas.

Appeal from the Switzerland common pleas court.

THOMAS SHERLOCK ET AL.
vs.
CHARLES ALLING, ADMR. } No. 2942.

On application of the appellants, it is ordered, by the undersigned, one of the judges of the supreme court, that execution and other proceedings on the judgment of the court below be stayed as the law directs, whenever the appellants shall have given bond according to law.

March 26th, 1872.

J. L. WORDEN,
Judge of the Supreme Court.

And upon said certified copy was endorsed the following memorandum, to wit:

837 To the clerk of Switzerland County:

MEM.—This order to stay is operative only when bond, as required by law, shall have been given on behalf of the appellant, and endorsement made hereon accordingly.

T. W. McCOY, *Clerk.*

Supplemental transcript.

And afterwards, to wit, on the 22nd day of May, A. D. 1872, came the appellants, and file the following supplemental transcript of the record of the proceedings of the Switzerland common pleas court in the above-entitled cause, to wit:

STATE OF INDIANA,
Switzerland County, ss:

Be it remembered that among the records of the Switzerland court of common pleas are to be found the following:

838 Pleas and proceedings in the Switzerland court of common pleas, at the March term, 1872, of said court, begun and held at the court-house, in the town of Vevay, on the second Monday in March, it being the 11th day of March, 1872, and before the honorable Scott Carter, judge of said court.

Be it remembered that, at said term of said court, on the 2nd day thereof, being the 12th day of March, 1872, the following proceedings were had, to wit:

CHARLES ALLING, ADMINISTRATOR OF THE estate of Otis B. Sappington, deceased,
vs.
THOMAS SHERLOCK ET AL. } Damages.

Comes the defendants, and file the following motion, to wit:

STATE OF INDIANA,
Switzerland County, ss:

Switzerland County common pleas court, March term, 1872.

839 CHARLES ALLING, ADMR. OF OTIS B. Sappington, dec'd,
vs.
THOMAS SHERLOCK ET AL.

The said plaintiff is hereby notified that the said defendants will make a motion in said Switzerland common pleas court, at the March term thereof, 1872, on the 2nd day of said term, to make an order on the plaintiff to furnish and put on file in said court, or in the clerk's office of said court, the map of the Ohio River, near the place of collision between the steamers United States and America, on December 4th, 1868, given in evidence by you on the trial of the above-entitled cause in said court, at the March term, 1871, or to furnish and put on file as aforesaid, a copy of said map, so that the same may be copied into the record of said cause on appeal to the supreme court.

February 24th, 1872.

WALKER & ROBERTS,
For Defendants.

And the said plaintiff, by Harrington and Korbly, his attor-
840 neys, appears to said motion for the purpose of making the objection, and admits a copy of said motion was duly served on him in time, but says that this court has no power or jurisdiction to grant the same, because the proceedings in this court in said cause have come to final judgment, and are no longer in force; but the court overrules said objection, and the plaintiff excepted at the time, and still excepts.

And, thereupon, the plaintiff appearing to said motion, objects to the granting of the same, because he says the said map is no part of the bill of exceptions, being only referred to in the same by a , (here insert,) and cannot be copied into the transcript for the reason that it is not a written instrument or documentary evidence within the meaning of the statute in such cases made and provided.

And, further, because said map is attached to the official field-notes of the surveys of the public lands, and is on file in the auditor's office of said Switzerland County; and the plaintiff has no power over
841 the same; but the court overruled said objection, and the plaintiff excepted and still excepts. And the court grants said motion, to the granting of which the plaintiff excepted; and the court orders as follows, (see order heretofore set forth herein;) and this bill of exceptions is by plaintiff's motion allowed by the court, and made a part of the record in open court.

SCOTT CARTER, *Judge.*

The following is a photograph of the map ordered by the court to be certified by the clerk of this court, to wit:

(Here follows diagram, marked page 841.)

842 STATE OF INDIANA,
Switzerland County, ss:

I, J. H. Netherland, clerk of the court of common pleas of said county, certify that the foregoing is a full, true, and complete transcript of all the proceedings had at the March term, 1872, of said court in the cause therein mentioned, as appears from the records and papers on file in the clerk's office of said court, including the copy of the map referred to in said proceedings as made according to the order of said court.

Witness my hand and the seal of said court at Vevay this 18th day of May, 1872.

[L. S.] J. H. NETHERLAND, *Clerk.*

Submission.

And afterwards, to wit, on the 29th day of May, A. D. 1872, came the parties, by their attorneys, and by their agreement this cause is submitted to the court upon the record, assignment of errors, and briefs on file, and is by the court taken under advisement.

843 *Appellee's motion to strike out additional transcript.*

And afterwards, to wit, on the 30th day of May, A. D. 1872, came the appellee, by his attorneys, and files his motion to strike out additional transcript, which motion reads in the words and figures following, to wit:

Supreme court of Indiana, May term, 1872.

THOMAS SHERLOCK ET AL.
vs.
CHAS. ALLING, ADM'R. } Appeal from Switz'd C. P. C.

The appellee moves the court to strike out of the record the additional transcript of the proceedings of the court below, had at the March term, 1872, ordering a photographic copy of a map to be made part of the bill of exceptions, for the following reasons:

1st. The said map was not made a part of the bill of exceptions, and was not filed in the case with the clerk, and was only referred to in the the bill of exceptions by a ["here insert."]

844 2nd. A map is not a document, and cannot be made part a bill of exceptions by a "here insert."

3rd. The court below had no power to order said map to be made a part of the record.

HARRINGTON & KORBLY,
Appellee's Attorneys.

And afterwards, to wit, on the 28th day of February, A. D. 1873, came the appellee, by his attorneys, and files his motion to advance said cause upon the docket, which motion is in the words and figures following, to wit:

Motion to advance.

In the supreme court of Indiana.

THOMAS SHERLOCK AND OTHERS
vs.
CHARLES ALLING, ADM'R OF O. B. SAPPINGton, dec'd. } No. 2942. Appeal from Switzerland C. P. C.

The appellee moves the court to take up out of its order on the

845 docket and decide the above-entitled cause at an early day, for the following reasons:

1st. The widow and three infant children for whom the said action was brought have nearly exhausted the entire estate which they inherited from said decedent, which was very small in amount, and if this cause is protracted by further delay, they will be hindered in successfully prosecuting it.

2nd. There are two causes pending against said appellants in the Ohio common pleas court, and one in the Jefferson common pleas, which grew out of the same disaster, and they depend in a great measure upon the decision in this cause. If this cause is decided at an early day, it will be, perhaps, the saving a great deal of expense to the estate of plain'f in said suits.

3rd. The appellants have raised questions in said cause, under

846 the laws of the United States, which, if decided by this court adversely to them, they claim they can review in this Supreme Court of the United States on a writ of error, under the 25th section of the judiciary act. And appellants' counsel have stated to appellees that in such an event they would review said cause to the Supreme Court of the United States, and delay the appellee for many years in the collection of the judgments appealed from.

4th. The questions for decision are of great public importance, relating to the validity of the law in relation to actions for death by negligence, as against persons navigating steamboats on the Ohio River, and the question of the jurisdictions of our courts over the Ohio River for crimes and torts committed thereon.

5th. Appellants request an early decision in their brief. (See appellants' brief, p. 66.)

For these and other reasons, we pray said cause may be advanced on the docket and decided.

HARRINGTON & KORBLY,
Appellees' Attys.

847 STATE OF INDIANA,
Jefferson County, ss:

Charles Alling, being duly sworn, says the statements of facts contained in the annexed motion are true as he is informed and believes.

CHARLES ALLING.

Subscribed and sworn to at said county this 26th day of February, 1873, before me,

Witness my hand and notarial seal.

[L. S.] JEROME T. MULLEN,
Notary Public.

848 And afterwards, to wit, on the 24th day of February, A. D. 1874, came the parties, by their attorneys, and the court being sufficiently advised in the premises, gave the following opinion and judgment, pronounced by Osborn, J.

Opinion and judgment.

THOMAS SHERLOCK ET AL.
vs.
CHARLES ALLING, ADMINISTRATOR OF OTIS B. SAPPINGTON, dec'd. } From Switzerland common pleas.

This action was instituted to recover damages for the death of Otis B. Sappington, under section 784 of the code, 2 G. & H., 330, which is as follows:

"When the death of one is caused by the wrongful act of another, the personal representative of the former may maintain an action therefor against the latter, if the former might have maintained an action, had he lived, against the latter for the same act or omission. The ac-
849 tion must be commenced within two years. The damages cannot exceed five thousand dollars, and must enure to the exclusive benefit of the widow and children, if any, or next of kin, to be distributed in the same manner as personal property of the deceased."

Alling, administrator of Sappington, brought the suit.

The complaint contains four paragraphs, each charging in different ways that the appellants were the owners of a line of steamboats, navigating the Ohio River between the port and city of Cincinnati, in the State of Ohio, and the port and city of Louisville, in the State of Kentucky, for the avowed purpose of carrying passengers, freight, and the United States mail between those places; that they owned and were running in that line and business the steamboats United States and America; that Sappington was a passenger on the United States; that

by reason of the carelessness and negligence of the servants and
850 employees of the appellants in charge and engaged in the management of said boats, they collided and caused the death of Sappington, without his fault, at the county of Switzerland, and within the territorial jurisdiction of this State, and that he left a widow and children, naming them.

There was a separate demurrer to each paragraph overruled, and exceptions taken to the ruling. But, as it is admitted by counsel for the appellants that the paragraphs set out the causes of action with sufficient certainty, and as they are very lengthy, we do not consider it necessary to make any further statement of their averments.

The defendants filed an answer consisting of nine paragraphs. First, that the collision occur'ed on the Ohio River, between low-water mark on the Indiana side thereof and the Kentucky shore, and within
851 the limits of the State of Kentucky, and wholly outside of this State. Second, the same as the first, and, in addition thereto, an act of the State of Kentucky in force at the time of the collision, that prior to its passage and outside of the provisions thereof, there was no liability within that State for damages or for loss or injury resulting in death, and that the suit must be brought in one year.

That act is set out in full in the answer. It gives the right to sue to the personal representatives of any person whose life is lost by the wilful neglect of another person, or persons, &c., against such persons, &c., and to recover primitive damages, for the loss or destruction of the life.

Third. This paragraph alleges that the defendants were using the boats in carrying on commerce among the States, under the laws of the United States, and a license regularly issued, and that they were
852 duly enrolled, equipped, and manned under such laws, an allegation of the same facts contained in the first paragraph; that the defendants were not on board of, or in any way engaged in the management of, the boats, and the injuries did not result from the want of care of the defendants, or either of them.

Fourth. This paragraph, after averring that the defendants know nothing of the death of Sappington or the appointment of the plaintiff as his administrator; that they have no knowledge that Sappington was a passenger on board of the boat at the time specified in the complaint, specially denies each of the several acts of carelessness alleged against them; that they were navigating either of the boats in the county of Switzerland in this State above low-water mark; that the United States was burned within the limits and jurisdiction of this State, and avers that if Sappington was *sofficated* and burned to death it was not within the limits of Indiana. The fifth paragraph was a general denial.

853 Sixth. This paragraph set up in bar of a part of the damages an insurance of $3,000 on the life of Sappington, for the benefit of his widow and children, which had been paid.

Seventh. In this paragraph it was stated that the alleged negligence which caused the death of Sappington occur'ed upon the Ohio River, beyond and outside of low-water mark, on the Indiana side and within the territorial limits of the State of Kentucky; that by the action of the current and the motion of the United States, she drifted inside such low-water mark before she sank, and before the death of Sappington, but that the acts, if any, which caused his death took place and were done within the territorial limits of Kentucky.

Eighth & ninth. These paragraphs deny the jurisdiction of the court

over the subject-matter of the action; the eighth, because the
854 negligent acts complained of as causing the death of Sappington were done within the State of Kentucky, and not in this State, and the ninth, because the boats were carrying on commerce among the States under regular license and enrollment, and were duly equipped and manned under the provisions of the act of Congress in such cases, and they were in such navigation to be governed and controlled only by the laws of the United States.

A motion was made to strike out the first, second, fourth, and seventh paragraphs of the answer, and so much of the third as set up the same facts stated in the first. Also, separate demurrers to the third, sixth, eighth, and ninth paragraphs. The motion to strike out was sustained, except as to the second paragraph, and overruled as to that. The demurrer was also sustained; proper exceptions were taken by both
855 parties. This left the second, fifth, and eighth paragraphs of the answer.

The appellee filed a reply to the second and eighth paragraphs of the answer, consisting of three paragraphs. The first alleged, amongst other things, that the first contact of the boats occur'ed on the north and Indiana side of the center and thread of the stream of the Ohio River, and ten feet below low-water mark, on the Indiana side of the river; and that by the force of the momentum of the boat the United States did pass thirty yards above low-water mark on the Indiana side; that after she had been thus driven above low-water mark, she caught fire, and burned Sappington to death; and that he then and there died, thirty feet above low-water mark.

The second states that the steamers came in contact north of the thread and center of the Ohio River, and between the center
856 thread of the stream and the Indiana shore, and thirty feet nearer the Indiana shore than the center thread of the stream; and all the injuries to Sappington were given, and his death took place, more than thirty feet nearer the Indiana shore than the thread of the river on the Indiana side thereof; and that the injuries and death of Sappington took place in the county of Switzerland, and in the territorial jurisdiction of this State.

The third was a general denial. A joint demurrer was filed to the first and second paragraphs of the reply, which was overruled, and an exception taken.

The cause was tried by a jury, who rendered a verdict for the plaintiff for the sum of five thousand dollars.

The jury also answered interrogatories submitted to them, by which they found that the collision of the two boats took place; that the United States sunk and burned up, and Sappington perished and died on the United States by reason of the collision and burning of
857 the last-named boat; and that it all happened and took place above low-water mark on the Indiana side of the Ohio River.

The appellants filed a motion stating fourteen causes for a new trial, which was overruled, to which they excepted, and judgment was rendered against them on the verdict of the jury.

They appeal, and have assigned nine errors.

The court committed no error in sustaining the motion to strike out the first, seventh, and a part of the third paragraphs of the answer. The matters therein alleged were put in issue by the averments of the complaint and the general denial. They were undoubtedly filed to test the question of the jurisdiction of this State on the Ohio River below low-water mark. The theory of the defence is, that the State has no

such jurisdiction, and that the cause of action arose below low-water mark.

858 The question has been argued by counsel on both sides, although counsel for the appellee insist that the answer of the jury to interrogatories settles the question that it arose above.

The court instructed the jury that the territorial limits of this State on the southeast is the low-water mark on this side of the Ohio River; that it has concurrent jurisdiction with the State of Kentucky for the enforcement of her civil and criminal laws over the Ohio River as far as it forms the boundary-line of this State. The court also instructed them that low-water mark means the lowest point to which the water of the river comes down in the lowest stage by reason of dry seasons; that the bottom or ground thus left dry, extending out from the shore and connecting with it by ground or bottom not covered with water, belongs to Indiana, though it be covered with water at a higher stage.

859 It is contended by the counsel for the appellants that the alleged carelessness which led to the collision, as well as the collision itself, took place below ordinary low-water mark, which it is insisted is the true line, and that the finding of the jury that it occurred above, was in consequence of the above instruction, defining the meaning of low-water mark. It is also contended that such carelessness, the collision and the death of Sappington, must have occur'ed in this State to entitle his administrator to maintain this action.

We do not consider it necessary to decide whether the true line is at ordinary or the lowest low-water mark. We are not prepared to say that the instruction that the latter was the true one, was erroneous. If it is erroneous, then there may be times when dry land on this side the water of the river will be in Kentucky.

Chief-Justice Marshall in Handly, v. Anthony, 5 Wheat., 376, 4 Pet. U. S. Cond. Rep., on page 695, says: "If it be true that the river Ohio, not its ordinary bank, is the boundary of Indiana, the

860 limits of that State can be determined only by the river itself. The same tract of land cannot be sometimes in Kentucky and sometimes in Indiana, according to the rise and fall of the river. It must be always in the one State or the other." And again, on page 696: "The State of Virginia intended to make the great Ohio River, throughout its extent, the boundary between the territory ceded to the United States and herself." And it was held that low-water mark on this side of the river was the boundary-line between this State and Kentucky. But, as we have already said, we do not decide the question.

Nor do we deem it necessary to decide whether the carelessness which led to the collision and death happened above or below low-water mark.

We have carefully considered the question presented by the instruction touching the jurisdiction of this State on the Ohio River, and are of the opinion that such jurisdiction exists. Carlisle v. The

861 State, 32 Ind., 55. In that case a murder was committed on the Ohio River outside the territorial limits of Spencer County in this State, but opposite thereto, and it was held that the court of that county had jurisdiction of the offense.

An act of the commonwealth of Virginia, entitled "An act concerning the erection of the district of Kentucky into an independent State," passed Dec. 18, 1789, provides: "That the use and navigation of the river Ohio, so far as the territory of the proposed State, or the territory which shall remain within the limits of this commonwealth lies therein, shall be free and common to the citizens of the United States, and the respective jurisdictions of this commonwealth and of the proposed State

on the river aforesaid, shall be concurrent only with the States which may possess the opposite shore of the said river." Rev. Laws of Virginia, vol. 1, p. 59; 1 G. & H., 57.

862 Sec. 2, art. 14, of the constitution of this State, 1 G. & H., 53, declares that the State shall have such concurrent jurisdiction.

The same jurisdiction is asserted by the general assembly, in the act defining the boundary of counties. (See. 1 G. & H., 190, sec. 93; same, vol. 191, sec. 96.)

The case of McFall v. Commonwealth, 2 Nat. (Ky.,) 394, was this: McFall was indicted in Kentucky for unlawfully solemnizing a marriage. His defense was that he was authorized by the laws of Ohio to solemnize marriages in that State, and that the alleged offense consisted in the exercise of such authority on the Ohio River, on the ferry-boat midway on the river.

The court held it to be no defence. The court, on page 398, says: "The word jurisdiction, as applied to a State, and as used in the compact with Virginia, imports nothing more than the power to govern by legislation, and without legislative enactments to enforce and carry out the jurisdiction so conferred. It cannot of itself be regarded

863 as operative or effectual to protect the appellant or defeat our own tribunals, to enforce and execute our own penal and criminal laws."

Garner's case, 3 Grattan, 655, like McFall v. Commonwealth, held that low-water mark was the true line, although the court was divided on the question, the minority holding that it should be high-water mark. There seemed to be no question about the concurrent jurisdiction on the river. Roberston, one of the minority, on page 714, says: "Access, the innocent use and free navigation of the river and jurisdiction, are all that Ohio can want or have under the cession." Johnston, one of the majority, speaking of Virginia, says: "She chose to divide her jurisdiction over it (the river) with the State of Ohio, but she did not divide her dominion over the soil." The term "river" in the compact, is construed in connection with "jurisdiction," as embracing the whole

864 water of the river, without reference to high or low water mark, to whatever is afloat on the river and not connected with the shore, whilst the same term is construed in connection with the boundary-line of the States and the determination of titles to property as meaning low-water mark.

In Handly v. Anthony, (5 Wheat., supra,) it was taken for granted that the jurisdiction of the State possessing the opposite shores of the river was concurrent.

We have seen that the State possesses concurrent jurisdiction, with the State of Kentucky, on the river at the place where the cause of action, if any, arose. The jurisdiction may be exercised in such manner as the State shall elect. It was exercised in unmistakable language in the constitution, by declaring that the State possesses such concurrent jurisdiction in civil and criminal cases with the State of Kentucky.

The jurisdiction which the State possesses is not limited to the

865 service of process; it is general, and includes the right of legislation, touching all civil and criminal cases on the river. To confine the meaning of the words civil and criminal cases to the mere service of process in such cases, would fail to accomplish the purposes of the constitution in asserting its jurisdiction.

The jurisdiction asserted by the constitution is not limited to judicial proceedings in civil and criminal cases. It is such as the State may choose to exercise touching such actions, and legislation is included.

There being no common-law offenses in this State, and our criminal law being entirely statutory, there can be no criminal case without legislation. (Hackney v. The State, 8 Ind., 494; Beall v. The State, 15 id., 378.)

The general assembly legislated on the subject, and this court held that the offense defined, though committed on the river, outside the boundaries and sovereignty of the State, was punishable in the court
866 of a county bordering on the river on the ground; that the jurisdiction of the State was concurrent with the State of Kentucky on the river. (Carlisle v. The State, supra.)

The law under which this action is brought is a general one, not limited or restricted as to the place where it is to be in force.

We think that laws enacted by the general assembly extend to and are in force in the territory over which jurisdiction of the State is concurrent, as fully as when as it is exclusive, without any special or particular provision on the subject. We know of no reason requiring a legislative declaration specifying the territory in which the act shall be in force in one case, which does not apply equally in both.

The jurisdiction is given by the cession and in the constitution in general terms. The only difference is, that over the territories within the boundaries of the State, it is exclusive, whilst on the river it is concurrent with Kentucky.

867 When the right of legislation is exercised by a general enactment, it must be regarded as an expression of the will of the legislature that such enactment shall be in force wherever the State has jurisdiction, unless the contrary appears. We cannot say that a failure of the legislature to specially include territory over which its jurisdiction is concurent with another State, shall be considered as an intention to exclude it from the operation of the law. On the contrary, we think the intention to include all the territory over which it has jurisdiction will be presumed.

Our conclusion is, that the State of Indiana possesses concurrent jurisdiction with the State of Kentucky on the Ohio River, where the two States possess the opposite shores; although, for the purpose of determining the boundaries, low-water mark on the northwest side of the river is the true line, and that Indiana, prior to the injury com-
868 plained of in this case, had asserted and exercised such jurisdiction in her constitution and by appropriate legislation, and, consequently, the question whether one State can pass a law fixing the rights and liabilities for acts and conduct in another, does not arise in this case.

It is also insisted that, even if the wrongful act or omission, the collision of the two boats, and the death' all took place on the Ohio River, within the jurisdiction of this State, and if the law in question was in force there at the time, it could not fix liability upon the appellants in this action, because the boats were at the time engaged in commerce among the States, under the laws of the United States. It is claimed that to do so would be an infring'ment by the State upon the exclusive power of Congress to regulate commerce among the States.

After a pretty careful examination of authorities bearing upon the question, our conclusion is adverse to the position taken by the appellants. We are unable to see how the law in any manner
869 attempts to regulate commerce. It requires the performance of no new duty; imposes no tax upon property engaged in commerce; makes no rules or regulations controlling or limiting the free and uninterrupted use of the vessels. So far as the provisions of the law in question are concerned, the boats of the appellants and the ap-

pellants themselves were as free from interruption in carrying on commerce among the States and in exercising all the rights conferred upon or inuring to them by reason of a compliance with the acts of Congress, as if the law had never existed.

An examination of the decisions of the courts holding a State-law invalid on the ground that it conflicted with the power of Congress to regulate commerce, will show, we think, that such decisions are made because the law imposed some burden or tax, or prescribed some rules, limitations, or conditions regulating or affecting such commerce.

870 (Gibbons v. Ogden, 9 Wheat.. 1; Brown v. Maryland, 12 Wheat., 419; Halderman v. Beckwith, 4 McLean, 286; The People v. The Saratoga R. R. Co., 15 Wend., 113, 131–'34; Perry v. Torrence, 8 Ohio, 521; Passenger Cases, 7 Howard, 283–573; Hays v. The Pacific M. S. Co., 17 Howard, 596; Gilman v. Philadelphia, 3 Wall, 713; Carndall v. Nevada, 6 Wall, 35; Steamship Co. v. Port-Wardens, do., 31; Sinnot v. Davenport, 22 Howard, 227; State Tonnage Tax-Cases, 12 Wall., 204.)

Hays v. The Pacific M. S. Co., (17 How., 596,) held that the vessels employed in commerce among the States were not liable to taxation in a State in which the owners did not reside. On pages 599–600 the right to tax the vessels at the home-port is clearly recognized. The passenger cases held that the States could not, under the name of health-laws, require the captain of a vessel to pay to health-commissioners a sum of money for passengers arriving on his vessel.

Those cases were decided by a bare majority. Tan*n*'y, Chief-Justice, and Justices Daniels, Nelson, and Woodbury dissented.

871 Sinnot v. Davenport, held that the State of Alabama could not require the owners of a boat navigating the waters of that State, to file a written statement in a court, setting forth the name of the vessel, the names of her owners, and their interest in the vessel, on the ground that it was in conflict with the act of Congress on the subject. In Steamship Co. v. Port-Wardens, (6 Wall., 31,) it was held that an act of Louisiana providing that the masters and wardens of a port within it should be entitled to fees, whether called on to perform services or not, for every vessel arriving in that port, was a regulation of commerce within the meaning of the Constitution, and therefore void. In Gibbon v. Ogden it was held that the laws of New York granting to Livingston and Fulton the exclusive right to navigate the waters of that State with steamboats were in collision with the acts of Congress regulating the coasting-trade, which, being made in pursuance of the Constitution,

872 were supreme, and the State laws must yield to that supremacy. In that case Chief-Justice Marshall, in delivering the opinion of the court, said that inspection laws, although they had a remote and considerable influence on commerce, quarantine-laws and health-laws of every description form a portion of that immense mass of legislation which may be exercised by the States. In Brig James Gray v. Ship John Fraser, (21 How., 184,) it was held that an ordinance of the city of Charleston prescribing where a vessel may lie in the harbor, how she may lie there, and what light she must have at night, is not in conflict with any law of Congress regulating commerce, or with the general admiralty jurisdiction conferred on the courts of the United States, and the ordinance was held valid. In Ex-parte McNeil, (13 Wall., 236,) it was held that the statutes of the several States regulating the subject of pilotage are

873 constitutional until Congress, by its own act, supersedes them. (Cooly v. The Board of Wardens, 12 How., 299; Osborn v. Mobile, 16 Wall. 479; Chicago & N. W. R. R. Co. v. Fuller, decided by Supreme

Court U. S., 1873, published in Chicago Legal News, vol. 6, No. 17, Jan. 17, 1874.)

We do not deem it necessary to make further reference to the several cases bearing upon the question under consideration. To do so, would extend this opinion to an undue length.

The section of the law under which the action is prosecuted simply provides that when the death of any one is caused by the wrongful act or omission of another, the personal representatives of the deceased may maintain an action therefor if he might have maintained one for an injury for the same act or omission. It requires nothing new to be done or omitted, and prescribes no rules touching the vessels, or their management. It gives a right of action where none existed before. The right of action in favor of the person killed died with him.

874 No action could be maintained for the death of another, unconnected with the loss of services before the law. The right of action which the deceased had at his death, is not by the law transferred to his representatives, but it gives to them a totally new one on different principles. (Blake v. Midland R. W. Co., 10 Eng. L. & Eq., 457–43; Whitford v. Panama R. R. Co., 23 N. Y., 465–70.) Yet, by the terms of the act, no action can be maintained under it, unless the act or omission causing the death was such that the deceased might, if alive, maintain an action for an injury caused by the same act or omission.

That provision is inserted for the purpose of defining the degree of delinquency with which the party must be charg'able in order to subject him to the action.

The action is to be prosecuted against the person of the party causing the death, and we are unable to see how it can, in any man-

875 ner, interfere with or tend to regulate commerce among the States or hinder or obstruct the free use of a license granted under an act of Congress when prosecuted against the owners of a steamboat, engaged in such commerce under such license.

But it is claimed, further, that the two States cannot exercise concurrent legislative jurisdiction over the same territory on account of practical difficulties; that the laws enacted by them on the same subject may be, and in this instance are, different and inconsistent. We admit that difficulties do, or, rather, may exist. The fact that they do does not and cannot defeat such jurisdiction, however. That exists. Each State is created subject to it. It is not exclusive in either. So far as the acts of the two States on this subject differ, we do not think there can be any real difficulty. If actions are prosecuted in both States a judgment in one will be a bar to the other. There can be but one judgment and

876 satisfaction for the same death. Even if judgment shall be rendered in each case, still, the satisfaction of one will be a satisfaction of the other. If the jurisdiction is not concurrent in both States, it does not exist in either, and the Ohio River is exempt from all legislative control except as may be exercised by Congress. There is no grant of exclusive jurisdiction to either. On the contrary, the provision is, that it shall be concurrent. The fact that the river is within the boundaries of Kentucky does not relieve us from the difficulty, or give that State exclusive jurisdiction in the face of the provision that it shall be only concurrent with Indiana.

We are of the opinion that the law applies to cases where death is caused by wrongful acts or omissions on vessels whilst navigating the Ohio River under license under the acts of Congress, by the owners, or their agents, officers, and servants in charge of such vessels; that it is not invalid, as tending to regulate commerce among the States,

877 or as hindering or obstructing the free use of the license under which such owners may be navigating the river.

A judgment was rendered in a State court of Rhode Island against the American Steamboat Company for negligently running over and killing George Cook on Nar'aganset Bay. The action was by the administrator of Cook under a law substantially like ours. It was objected that the State court had not jurisdiction of the cause of action. The jurisdiction was maintained by the Supreme Court of the United States, where the judgment of the State court was affirmed. (Steamboat Company v. Chase, 16 Wall., 522.) On page 531, it is said, "Undoubtedly, the general rule is that State laws cannot extend or restrict the jurisdiction of the admiralty courts; but it is suggested that the action may be maintained in this case without any departure from that principal, as the only practical effect allowed to the State
878 statute is to take the case out of the operation of the common-law maxim that personal actions die with the person."

"Sufficient has already been remarked to show that the State courts have jurisdiction if the admiralty courts have jurisdiction, and a few observations will serve to show that the jurisdiction of the State courts is equally undeniable if it is determined that the case is within the jurisdiction of the admiralty courts." It was held that the rule was applicable in all cases where the action was, in form, a common-law action against the person without any of the ingredients of a proceeding in rem to enforce or maintain a lien. If the suit is in rem against the thing, the original jurisdiction is exclusive in the district court, but where it is in personam against the owner, the party may proceed by libel in the district court, or he may, at his election, proceed in an action at law, either in the circuit court of the United States, if the citizenship
879 of the parties is such as to give that court jurisdiction, or in a State court as in other cases cognizable in the State and Federal courts, exercising jurisdiction in common-law cases. And the court also held that the common-law remedy existed and might be enforced in State courts, although the action was created by a State statute enacted subsequent to the passage of the judiciary act. On the subject of survivorship of actions for personal injuries, the court said: "Nearly all the States have passed laws to prevent such a failure of justice, and the validity of such laws has never been questioned."

The sixth paragraph of the answer raises the question whether the receipt of a sum of money by the persons for whose benefit the action is prosecuted on account of a policy of insurance on the life of the deceased can be shown to reduce the amount of the recovery. The argument urged in support of the position is, that the damages are recoverable for the death, and when that death, brings money, which
880 might not otherwise come to the party, a pecuniary benefit to the extent of the amount received has accrued to the party from the death; that if the wrongful act, causing the death has been the occasion of pecuniary benefit, the pecuniary damages cannot be ascertained without deducting from the whole damage the pecuniary benefit. If the argument is sound, it would apply to a case where the pecuniary benefit resulted by descent or devise. It proposes to use as a defence to damages resulting from the wrongful act of the defendants by way of set-off, recoupment, or in mitigation of such damages, pecuniary benefits received by the injured party, to which the defendants had not contributed, and not resulting from or connected with the act causing the death; benefits, which, it is fair to presume, would have been realized at a future day without the aid of their wrongful act. To allow

such a defence would defeat actions under the law, when the party killed had by his prudence and foresight made provisions or left means for the support of his wife and children, and the wrong-doer
881 would thus be enabled to protect himself against the consequences of his own wrongful act. "If the person injured had survived and recovered, he would have added so much to his personal estate, which the law, on his death, if intestate, would have passed to his wife and next of kin; in case of his death by the injury, the equivalent is given by a suit in the name of his representatives." (Railroad v. Barron, 5 Wall., 90–105.)

In Althorf v. Wolfe, (22 N. Y., 355,) which was an action on a statute similar to ours, the court refused to instruct the jury to take into consideration, in assessing the damages, the money received by the widow on a policy of insurance on the life of her deceased husband. On appeal, the judgment for the plaintiff was affirmed. So, "where the whole loss by collision of two vessels has been paid by the underwriters on one of them, and the owners of that one sue those of the other, on account of the collision, the latter have no right in determining the damage to deduct the amount so paid by the insurers." (2 Phillips on In-
882 surance So., 2,163.) No case has been found recognizing the doctrine claimed, and we are not willing to be the first to sanction it.

The court instructed the jury that if they found from the evidence that the defendants were the owners of the boats, and that they were engaged in carrying passengers thereon; that the law imposed upon them, their agents, servants, employees, the duty of exercising the highest degree of care in the navigation and management of their boats, but that they were not insurers or bound to carry passengers safely at all events.

The defendants requested the court to instruct the jury that they were bound to use all such care and skill to carry their passengers safely as is ordinar'y used and exercised by carriers of passengers on steamboats on the western rivers. That if they employed officers and persons to navigate their boats possessing such skill in their respective positions on said boat as are commonly and ordinarily possessed
883 by persons in that particular business, and if that degree of care and skill were exercised, the defendants were not liable, which was refused.

The rule as stated by the court is the true one, as between passenger and carrier. (The Jeffersonville R. R. Co. v. Hendricks, 26 Ind., 228.) On page 231 the court say, "They are required to exercise the highest degree of care to secure the safety of passengers, and are responsible for the slightest neglect, if an injury is caused thereby."

(Thayer v. The St. Louis, A. & T.H. R. R. Co., 22 Ind., 26; Gillenwater v. Th' Madison & I. R. R. Co., 5 Ind., 339; Stokes v. Saltonstal, 13 Pet., 181; Caldwell v. Murphey, 1 Duer, 233.) In the case last cited the court, on page 241, says, "Having thus provided the means of transport, they are in like manner bound to use the utmost care and diligence in the manageing, directing, and using those means so that, so far as human foresight can go, they may guard against injury. Having
884 done all that human foresight can do, and loss happening, they are not liable. * * * Human life is too valuable to be required absolutely at the hands of those who have done all that the utmost care and foresight can do for its protection. But the magn'tude of its value at the same time requires of carriers of passengers such extreme care and foresight." (Ingalls v. Bills, 9 Met. 1; Camden & Am-

boy R. R. Co. vs. Burke, 13 Wend., 611.) The carrier of passengers is not an insurer or guarantor. For goods, the carrier is answerable at all events, but he does not warrant the safety of passengers. His contract with them is to provide for their safe conveyance, as far as human foresight will go.

His liability as a carrier of goods is that of an insurer or guarantor, and accident is no excuse, whilst as a carrier of passengers he is liable only for negligence. (1 Reaf. R. W., 625; 2 do., 174, S. 176, & notes; Phil. & Reading R. R. Co. v. Derby, 14 Pet., 468.) The request of the appellants was that the jury should be instructed to find that a carrier
885 of passengers is only required to exercise such care and skill as are ordinarily exercised on steamboats on the western rivers. It measured the care and skill to be used not by what was necessary and proper for the safety of the passengers, but what was ordinarily possessed and exercised by others.

The appellants insist that there can be no wrongful act or omission if the party has exercised due and ordinary care; that the law requires no more than ordinary care and skill of any one to free him from the charge of wrong.

The degree of care and skill required depends upon the relation of the parties. If the injured party be not a passenger, the defendants would not be required to exercise that degree of vigilance which would not be required towards a passenger.

Towards one the liability would spring from a contract expressed or implied and upheld by an adequate consideration. Towards the other there would be no obligation but that of justice and humanity.

886 The appellants also requested the court to give to the jury the following instruction:

"10. In respect to the degree of negligence on the part of the defendants on another steamer, and on which deceased was not a passenger, I say defendants were bound, through their employees, to exercise in respect to deceased common ordinary care and skill and prudence, only such as any man is bound to observe in the use of his own property and in the exercise of his own rights; not to use or exercise the other in such a careless manner as to injure another."

The court refused to comply with the request.

No authority is cited or reason given in support of the instruction, and we know of none. The two boats were owned by the appellants. Both were running on the same line as carriers of passengers. The deceased was their passenger, and travelling on one of their boats. They cannot escape by a discharge of their duty on the particular vessel
887 upon which he took passage and was being transported, if in consequence of a failure to exercise the same degree of care on the other vessel on which the deceased lost his life. We do not think that the carrier has discharged his whole duty by exercising proper care and skill with reference to the particular vessel or vehicle upon which he is carrying his passengers. In our opinion, the same degree of vigilance is required by him in the management of others employed and in connection with the same busin'ss. (Phil. & Reading R. R. Co. Derby, 14 How., 468.)

Other instructions were requested and refused on this subject, but as they all involved substantially the same thing, it is not necessary to notice them specially.

The appellants complain of the following instruction, and say that it substantially took the case from the jury:

"7. If the jury find from the evidence that the employees of the defend-

ants engaged in navigating said boats just before the collision
888 saw each the other boat while they were from two to three miles apart, and if the jury find that the said boats were accustomed to pass at and about the same point; and if the jury find that the river at the point of collision was wide enough for said boats to pass without danger, with proper care; and if the jury find that the collision did occur there, such circumstances tend to show negligence, and it devolves upon the defendants to show that the collision was not caused by their neglect or omission."

We see no objection to the charge. It informs the jury that if certain facts are found from the evidence they tend to show negligence, and that the defendants must show that the collision was not caused by their neglect. In other words, that prima facia the charge of negligence is made out. It must be considered with reference to the relation of the parties. The boats were in sight of the persons in charge of them for two or three miles. They were accustomed to pass at about the
889 same point, so that they would be on the lookout and more than ordinarily watchful. The river was wide enough for the boats to pass without danger, with proper care. We think that if those facts were found by the jury that they did so far show negligence, that it devolved upon the defendants to rebut the presumption of a want of proper care in passing.

If, as is suggested, some sudden, unexpected thing occur'ed just before the collision, which could not with due care have been avoided, it was for the defendants to show it. (McKinney v. Neil, 1 McLean, 540.) In that case Judge McClean charged the jury that the upsetting of the stage was prima-facia evidence of negligence, and to sustain his action it was only necessary for the plaintiff to show that he was a passenger, and that he was injured by the upsetting of the stage, (p. 549-'50; Stokes v. Saltonstall, 13 Pet., 181.) In that case the instructions were substantially the same as in the case of McKinny v. Neil, and the
890 Supreme Court held that they were correct. (Holbrook v. U. & S. R. R. Co., 16 Barb., 113; same case, 2 Kern, 236.)

Proof of the injury does not raise a presumption of negligence. But where it is shown that the injnry is caused by a collision of the vessel, car or vehicle in which the passenger is being carried, with another, the presumption of negligence immediately arises. Ordinarily the circumstances attending the injury are shown in proving the injury and its cause, and, of course, it is immaterial who introduces the evidence. But that does not affect the rule of law laid down in the instruction.

The following instruction was asked by the appellants:

"15. The burden of making out all the material facts of carelessness causing the death of Sappington is upon the plaintiff, and does not change in any progress of the case." The court refused to give it as asked, but gave it with the addition, "Except as to the United States giving the first signal, if she did so, as I have before explained to you."

891 The following portion of the general charge was the explanation referred to:

"There are, no doubt, circumstances that would render it proper for the descending boat to signal first; but there must be some palpable necessity for it, involving the safe navigation and security of the descending boat, and a violation of the rule, in this respect, resulting in disaster, raises a presumption of culpability which can only be removed by proof that the collision is attributable to some other causes. If you find from the evidence that there was a collision between the defend-

ants' steamboats United States and America, and that the United was the descending boat, and the America was the ascending boat, and that the United States first signaled to pass, and that there was a collision between said boats, and that the deceased was a passenger on the United States, and that, in consequence of such collision, the United States was set on fire and burned, and that the deceased lost his
892 life by the collision, or was suffocated or burned to death by the fire occasioned by such collision, then the burden of proof is on the defendants to show that there was some necessity for the United States giving the first signal, as that the navigation was dangerous; that the darkness of the night, the narrowness of the channel, the close and dangerous proximity of the boats, or some other cause which rendered it necessary that the signal should be given and the rules of navigation departed from."

The rules of navigation spoken of are those prescribed by the board of supervising inspectors, under an act of Congress approved Aug. 30 1852, (10 U. S. Statutes at Large, 61,) which, so far as it is claimed they affect this case, are as follows:

Rule 1. When steamers are approaching each [other] the signal for passing shall be one sound of the steam-whistle to keep to the right, and two sounds of the steam-whistle to keep to the left. These signals to be made first by the ascending steamer. If the dangers of navigation, darkness of the night, narrowness of the channel, or any
893 other cause render it necessary for the descending boat to take the other side, she can do so by making the necessary signals, and the ascending boat must govern herself accordingly. These signals to be observed by all steamers, either day or night.

Rule II. Should steamers be likely to pass each other, and these signals should not be made and answered by the time such boats shall have arrived at the distance of eight hundred yards from each other, the engines of both boats shall be stopped, or should the signal be given and not properly understood from any cause whatever, both boats shall be backed until their headway shall be fully checked, and the engines shall not be again started ahead until proper signals are made, answered, and understood.

* * * * * * *

Rule X. Doubts or fears of misunderstanding signals may be expressed by several short sounds of the whistle in quick succession.

894 Sec. 29 of the act of Congress provides that if any pilot, engineer, or master of any such vessel shall neglect or wilfully refuse to observe such rules, he shall be liable to a penalty of thirty dollars, and to all damages done to any passenger in his person or baggage by such neglect or refusal; "and no such vessel shall be justified in comming into collision with another, if it can be avoided."

The substance of the instruction as given, was that the burden of proof of all the material facts of carelessness, causing the death of the deceased, remained with the plaintiff, and did not change in any progress of the case; but if it was shown that the United States, the descending boat, departed from the rules of navigation and gave the first signal to pass, then the burden of proof was upon the defendants to show that there was a necessity for it.

One of the acts of carelessness alleged in the complaint is that
895 the pilot of the United States gave the first signal in violation of the rules of navigation. If that was shown to be true, it was prima facia an act of carelessness, and the onus was upon the defendants to show a necessity for such departure from the rules.

"Where the party having the burden of proof gives competent and prima facie evidence of a fact, and the adverse party, instead of producing proof which would go to negative the same proposition of fact, proposes to show another and a distinct proposition, which avoids the effect of it, then the burden of proof shifts, and rests upon the party proposing to show the latter fact." (Powers v. Russel, 13 Pick., 69, 77.) It will be observed that the addition to the charge asked makes the exception upon the condition that the jury find that the first signal was given by the descending boat. The language is, "If she did so, as I have before explained to you." The language used in the cases of
896 Central Bridge v. Butler, (2 Gray, 130,) and Delano vs. Bartlett, (6 Cush., 364,) when applied to the facts in those cases, is not in conflict or inconsistent with that quoted from 13 Pick., supra; indeed, the same language was quoted in the case of Delano v. Bartlett.

In the case at bar, the proposition of fact which the plaintiff was required to prove was, that the descending boat gave the first signal to pass. The charge of the court did not relieve him from the burden of proof of that fact. As to all the evidence on that point, the burden remained upon him. If evidence was before the jury tending to negative such facts, the jury would be required to weigh and consider it in deciding the question. But such fact being found to be true, then as to the other proposition of fact which was an excuse for such departure from the rules of navigation, the burden of proof shifted, and rested upon the defendants. We think it may be said that when a particular fact is proved by the party alleging it, and the adverse party seek to avoid the effect of it by the proof of other affirmative and independ-
897 ant facts, the burden of proof of such affirmative facts is upon the latter.

Other instructions were given and refused, and exceptions taken. But we think they involved substantially the same questions already discussed, and therefore deem it unnecessary to further consider them.

The seventh cause for a new trial is, that the court erred in excluding evidence offered by defendants and excepted to; and the court erred in admitting evidence offered by plaintiff and objected to by defendants, to which they excepted. It was too indefinite and uncertain to raise any question. Neither the names of the witnesses or the character of the testimony was specified.

(Eden v. Longenfelter, 39 Ind., 19; Cass v. Krimbell, id., 357; Wright v. Potter, 38 do., 61; Mooklar v. Lewis, 40 do., 1; Ally v. Gavin, id., 446.)

Another cause was that the court erred in refusing to let C. G. Pearce testify when offered by defendants.

898 Pearce was a defendant in the action and the court refused to allow him to testify on that ground.

The proviso in section two of the act, defining who may be witnesses, &c., approved March 11, 1867, (3 Ind. Statute, 561,) declares, "that in all suits where an executor, administrator, or guardian is a party in a case where a judgment may be rendered, either for or against the estate represented by such executor, administrator, or guardian, neither party shall be allowed to testify as a witness, unless required by the opposite party or by the court trying the cause." * * *

The witness offered was clearly within the letter of the law. He was a party to the action, and judgment might be rendered for the administrator.

The language of the statute is clear and explicit, and unmistakably renders both parties incompetent to testify in *his* own behalf in any case where an administrator is a party and where a judgment might be

rendered for or against such administrator. An administrator might be a party to an action where no judgment could be ren-
899 dered for or against him, as in an action on a note assigned by delivery, without indorsement by the decedent, when the administrator is made a party to answer as to the interest of the estate in the note. In such a case undoubtedly the proviso would not render the parties incompetent to testify.

We have examined the evidence, and think it sustains the verdict of the jury.

The judgment of the said Switzerland common pleas is affirmed with costs and two per cent. damages.

It is therefore considered by the court that the judgment of the court below in the above-entitled cause be in all things affirmed at the cost of the appellants; all of which is ordered to be certified to said court.

And it is further considered by the court that the appellee
900 recover of the appellants the sum of one hundred dollars for damages, and the further sum of dollars and cents for his costs and charges in this behalf expended.

And afterwards, to wit, on the 7th day of March, A. D. 1874, the same being the 89th day of the November term, 1873, came the appellants, by their attorneys, and filed their petition for allowance of writ of error and citation; which is in the words and figures following, to wit:

Petition for allowance of writ of error and citation.

Supreme Court of the United States.

THOMAS SHERLOCK, ZACHARIAH M. SHIRLEY, Christy G. Pearce, Moses Andres, Frank Carter, D. C. Benedict, Wm. C. Hite, Thomas Gaff, Patrick Rogers, plaintiffs in error
vs.
CHARLES ALLING, ADMINISTRATOR OF OTIS B. Sappington, defendants in error.
} Error to the supreme court of Indiana.

901 The petition of Thomas Sherlock et al., the others above-named, for allowance of writ of error and signature to citation.

To the Hon. Alexander C. Downey, ch. j. of the supreme court of Indiana:

Your petitioners, said Thomas Sherlock et al., composing the United States Mail Line Company, respectfully represent that heretofore, to wit, at the March term of the common pleas court and for the county of Switzerland, in the State of Indiana, a judgment was rendered against them and in favor of said Charles Alling, administrator of Otis B. Sappington in the court of common pleas, sitting in and for the said county, in the sum of $5,000 & costs, which said judgment draws interest at the rate of six per cent. from the 25th day of March, 1871; that the said Thomas Sherlock et al., plaintiffs in error aforesaid, caused the said case to be removed, under the practice in Indiana in such
902 case made and provided, by appeal, for the purpose of obtaining a reversal thereof, for error committed by the said court of common pleas, which said supreme court of Indiana is the court of last resort within said State in which said errors could be heard and corrected.

That afterwards such proceedings were had that, at the November term, 1873, of the said supreme court of Indiana, the said judgment of the *the* common pleas court in and for Switzerland County was affirmed.

That, in the proceedings, judgment, and record of said supreme court, in said cause, and which is final therein, there is error, to the damage and prejudice of the said Thomas Sherlock et al., plaintiffs in error.

That there was drawn in question in said cause the validity of section 784 of the "act concerning the civil proceedure of courts and their jurisdiction in civil matters," passed by the general assembly of the State of Indiana, and approved by the governor of said State,
903 June 18th, which the plaintiffs in error claimed and say was and *as is*, applied to them in this case, repugnant to the Constitution and laws of the United States, and such questions appear on the record to have been made, and the decision of the supreme court of Indiana was in favor of the validity of the said act.

That the said plaintiffs in error set up and claimed that, as navigators on the Ohio River engaged in commerce among the several States bordering upon the said river, between the cities of Cincinnati, Ohio, and Louisville, Ky., and under the laws of the United States regulating such commerce, and relating to the coasting trade and fisheries, and under the laws of the United States relating to the better security of the lives of passengers upon vessels propelled in whole or in part by steam, and by virtue of a license and enrollment and inspection papers under said laws and of their conformity thereto, and by virtue of the laws of the United States relating to tunnage and hospital dues,
904 and their payment thereof, and by virtue of the ordinance relating to the government of the Northwestern Territory and the compact between Virginia and Kentucky relating to the navigation of said river, the said plaintiffs in error had the right and privilege, and were entitled to carry on said commerce free and exempt from any liability created by virtue of said 784th section of the act aforesaid, and the decision of the said supreme court of Indiana was against the privilege and exemption set up by the said plaintiffs in error, under said acts, and under and by virtue of license and enrollment papers granted thereunder, and by virtue of said compact.

Wherefore the petitioners pray your honnor to allow a writ of error in behalf of plaintiff from the Supreme Court of the United States to the supreme of Indiana, and a citation to be signed and issued by your honor that the supreme court of Indiana may send up the record of said cause and if the proceedings to the Supreme Court of the
905 United States, that the judgment aforesaid may be reviewed and reversed by the Supreme Court of the United States. That plaintiff now offers a bond for supersedeas according to law, and he prays that execution be stayed, and for other relief.

LINCOLN, SMITH & STEPHENS, &
WALKER & ROBERST,
For Pltffs. in Error.

And afterwards, to wit, on the 10th day of March, 1874, came the plaintiffs in error, and filed their bond for supersedeas on writ of error; which is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Thomas Sherlock, Christopher G. Pierce, Jonathan H. Barker, of Cincinnati, Hamilton County,

State of Ohio; Thomas Gaff, of Aurora, Dearborn Co., Indiana; Theodore Cook and James N. Gaff, of Cincinnati, Hamilton Co., Ohio, and W. E. Gibson and J. Chamers, of Aurora, Dearborn Co., Indiana;
906 the said Sherlock, Pierce, Barker, and Gaff as principals, and the others as sureties, are held and firmly bound unto Charles Alling, administrator, in the full and just sum of thirteen thousand dollars to be paid unto the said Charles Alling, administrator, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators firmly by these presents, jointly and severally, sealed with our seals and dated this 6th day of March, 1874.

Whereas, lately, at the November term of the supreme court of Indiana, in a suit between Thomas Sherlock, Christopher G. Pierce, Thomas Gaff, Zachariah M. Shirley, Moses Andrews, Frank Carter, D. C. Benedict, William C. Hite, & Patrick Rogers, plaintiffs in error, vs. Charles Alling, administrator of Otis B. Sappington, deceased, defendants in error, judgment was rendered and affirmed against said plaintiffs in error, and in favor of said defendants in error for five thousand dollars,
907 with costs and two per cent. damages, and which said judgment draws interest from the 25th day of March, 1871, and said plaintiffs in error having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in said cause, and a citation directed to the said Charles Alling, administrator, him to be and appear at a Supreme Court of the United States to be held at Washington on the second Monday of October, 1874:

Now the condition of the above obligation is such that, if the said Thomas Sherlock and others above-named, plaintiffs in error, shall prosecute said writ of error to effect and answer all damages & costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

THOMAS SHERLOCK. [SEAL.]
C. G. PIERCE. [SEAL.]
J. H. BARKER. [SEAL.]
908 THOS. GAFF. [SEAL.]
THEO. COOK. [SEAL.]
W. E. GIBSON. [SEAL.]
J. CHAMERS. [SEAL.]
JAMES W. GAFF. [SEAL.]

Sealed and delivered in presence of—"H" in Barker's name and "Cincinnati" immediately afterward interlined before signing—
T. D. LINCOLN.
W. C. SHAW.

Approved by the supreme court this 10th day of March, 1874.
A. C. DOWNEY,
Chief Justice.

And afterwards, to wit, on the 16th day of March, A. D. 1874, the following proceeding were had in said cause, to wit:

Writ of error.

UNITED STATES OF AMERICA:

The President of the United States of America to the honorable the judges of the supreme court of the State of Indiana, greeting:

909 Because on the record and proceedings, as also on the rendition of a judgment in a plea which is in the said supreme court

before you, between Thomas Sherlock, Zachariah M. Shirley, Christopher G. Pearce, Moses Andrew, Frank Carter, D. C. Benedict, William C. Hite, Thomas Gaff, Patrick Rogers, composing the United States Mail Line Company, plaintiffs in error, and Charles Alling, administrator of Otis B. Sappington, deceased, defendants in error, a manifest error hath happened to the great damage of the said plaintiffs in error, as by his complaint appears; and it being fit that the errors, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning
910 the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twelfth day of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, this 16th day of March, A. D. 1874.

[L. S.] J. D. HOWLAND, *Clerk.*

Allowed by the supreme court of the State of Indiana this 16th day of March, 1874.

A. C. DOWNEY, *Ch. J.*

911 A copy of which writ of error was served on the attorneys of the defendant in error, and returned with the following endorsement thereon, to wit:

The within writ of error was served on us the 23d day of March, A. D. 1874, at Madison, Indiana.

HARRINGTON & KORBLY,
Attys. for Charles Alling, Admr.
of Otis B. Sappington, dec'd.

And on the same day the following proceedings were had, to wit:

Citation.

The United States of America, greeting, to Charles Alling, administrator of Otis B. Sappington, dec'd:

912 You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the second Monday of October, 1874, pursuant to a writ of error filed in the clerk's office of the said Supreme Court, wherein Thomas Sherlock, Zachariah M. Shirley, Christopher G. Pearce, Moses Andrew, Frank Carter, D. C. Benedict, William C. Hite, Thomas Gaff, Patrick Rogers, composing the United States Mail-Line Company, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Alexander C. Downey, chief justice of the

supreme court of Indiana, this 16th day of March, one thousand eight hundred and seventy-four.

ALEXANDER C. DOWNEY,
Chief-Justice.

913 A copy of which citation was served on the attorneys of the defendant in error, and returned with the following endorsement thereon, to wit:

The within citation was served on us this 23rd day of March, 1874.

HARRINGTON & KORBLY,
Attys. for Charles Alling, Admr. of Otis B. Sappington, deceased.

914 THE STATE OF INDIANA
Supreme Court:

I, Charles Scholl, clerk of the supreme court of the State of Indiana, do hereby certify that the above and foregoing is a full, true, and complete copy of the transcript of the record of the proceedings and judgment of the Switzerland common pleas court in the above-entitled cause, also a full, true, and complete copy of the proceedings and judgment of the supreme court of the State aforesaid therein, together with a full, true, and complete copy of all proceedings had to effect an appeal to the Supreme Court of the United States of America, as the same appear of record in my office.

Witness Charles Scholl, the clerk, and the seal of the supreme court of the State of Indiana, at Indianapolis, this 12th day of May, A. D. 1874.

[SEAL.] CHARLES SCHOLL, *C. S. C.*

915 THE STATE OF INDIANA,
Supreme Court:

I, Alexander C. Downey, chief justice of the supreme court of the State of Indiana, do hereby certify that Charles Scholl, esq., whose signature is affixed to the foregoing record, is clerk of the supreme court of the State of Indiana, and hath the keeping of the files, records, and proceedings of said court, and is, by law, the proper person to make out and certify copies thereof, and that full faith and credit are and ought to be given to his acts and attestations done as aforesaid, and that his attestation to the foregoing record is in due form.

916 In testimony whereof I have hereunto set my hand and caused the seal of the said supreme court to be affixed this 19th day of May, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] ALEX. C. DOWNEY,
Chief Justice.

(Indorsement on cover:) No. 457. Thomas Sherlock, Zachariah M. Shirley, C. G. Pearce, Moses Andrew, Frank Carter, D. C. Benedict, Wm. C. Hite, Thomas Gaff, Patrick Rogers, composing the United States Mail-Line Company, plaintiffs in error, vs. Charles Alling, admr. of Otis B. Sappington, dec'd. Indiana sup. court. Filed 29th July, 1874.